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SUPREME COURT OF THE UNITED STATES.

No. 32.

GEORGE BEASTON, GARNISHEE OF THE ELKTON BANK OF MARYLAND, PLAINTIFF IN ERROR,

VERSUS

THE FARMERS BANK OF DELAWARE.

ERROR TO THE COURT OF APPEALS FOR THE EASTERN SHORE OF MARYLAND.

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MARYLAND, *sc.*

At a court of appeals of the State of Maryland, begun and held for the eastern shore of the said State, at Easton, in Talbot county, on the third Monday of November, being the twenty-first day of the said month, in the year of our Lord one thousand eight hundred and thirty-six, and the sixty-first year of the independence of the United States of America, were present:

The honorable John Buchanan, chief judge; John Stephen, Stephenson Archer, Thomas B. Dorsey, Ezekiel F. Chambers, Asa Spencer, esquires, judges; John Hanington, esquire, sheriff of Talbot county; Thomas C. Nichols, clerk.

In the record of proceedings, of the said court among others is the following, viz:

The President, Directors, and Company of the Farmers Bank of Delaware, vs. *George Beaston, garnishee of President, Directors, and Company of the Elkton Bank of Maryland.*

Be it remembered that, on the first Monday in June, being the second day of the same month, in the year of our Lord eighteen hundred and thirty-four, the chief judge and associate judges of the second judicial district of the State of Maryland, in pursuance of the act of Assembly in such case made and provided, transmit to the court of appeals here the record and proceedings of a plea which was lately depending before them in Cecil county court between the president, directors, and company of the Farmers Bank of Delaware, plaintiff, and George Beaston, garnishee of the president, directors, and company of the Elkton Bank of Maryland, defendant; and wherein the said county court gave judgment for the said George Beaston, garnishee of the president, directors, and company of the Elkton Bank of Maryland; and from which said judgment, the said president, directors, and company of the Farmers Bank of Delaware, prayed an appeal unto the court of appeals here, the tenor of which said record and proceedings is in form following, to wit:

CECIL COUNTY, *to wit*.

At a county court of the second judicial district of the State of Maryland, begun and held at the court-house, in the town of Elkton, in and for the county aforesaid, on the first Monday of April, being the seventh day of the same month, in the year of our Lord one thousand eight hundred and thirty-four, were present:

The honorable Richard Tilghman Earle, chief judge; Philemon B. Hopper and John B. Eccleston, associate judges; Noble Pennington, esquire, sheriff; and James Sewall, clerk.

In the record of proceedings of the same court, among other things are the following, to wit:

The President, Directors, and Company of the Farmers Bank of the State of Delaware, vs. *George Beaston, garnishee of the President and Directors of the Elkton Bank of Maryland.*

Attachment, fieri facias, &c.
Judgment for defendant upon case stated.
Appeal prayed and granted to court of appeals.

Be it remembered that, heretofore, to wit, on the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and thirty, the said president, directors, and company of the Farmers Bank of the State of Delaware, by James R. Blach, esquire, their attorney, prosecuted and sued forth out of Cecil county court here the writ of the State of Maryland of attachment fieri facias, directed to the sheriff of Cecil county aforesaid, in the words following, to wit:

CECIL COUNTY, *sc.*

The State of Maryland to the sheriff of Cecil county, greeting:

Seal's place of Cecil county court.

Whereas at a county court, begun and held at the court-house, in the town of Elkton, in and for Cecil county aforesaid, on the first Monday of April, in the year of our Lord one thousand eight hundred and thirty, the president, directors, and company of the Farmers Bank of the State of Delaware, by the judgment of the said court recovered against the Elkton Bank of Maryland, late of said county, as well the sum of ten thousand dollars, current money, for their damages which they had sustained by occasion of the non-performance of a certain promise and assumption to the said president, directors, and company of the Farmers Bank of the State of Delaware, by the said president and directors of the Elkton Bank of Maryland, before that time made, as the sum of five dollars and ninety-six cents and two-thirds of a cent, which was then and there adjudged unto the said president, and directors, and company of the Farmers Bank of the State of Delaware, for their costs and charges by them about their suit in that behalf laid out and expended; whereof the said president and directors of the Elkton Bank of Maryland are convict as of record is manifest: therefore, you are here hereby commanded to attach any of the lands, tenements, goods, chattels, and credits of the said president and directors of the Elkton Bank of Maryland, if they shall be found in your bailiwick, to the value of the damages, costs, and charges aforesaid; and when you have the same so attached, or any part thereof, the same in your custody safe keep, so that you have the same before the said county court, to be held at the court-house in the town of Elkton aforesaid, on the third Monday of October next, then and there to be condemned, according to the act of Assembly in such case made and provided, to and for

the use of the said president, and directors, and company of the Farmers Bank of the State of Delaware, unless the said president and directors of the Elkton Bank of Maryland shall come then and there by themselves, or lawful attorney, and shew sufficient cause to the contrary; and you are likewise commanded, by good and lawful men of your bailiwick, to make known to such person or persons in whose hands or possession the said goods, chattels, and credits of the said president and directors of the Elkton Bank of Maryland shall be attached, that he or they be and appear at the said court, at the day and place aforesaid, to shew cause (if they have any) why the said goods, chattels, and credits, so as above said in their hands attached, should not be condemned, and execution thereof had and made, as in other cases of recoveries and judgments given in courts of record, according to the directions of the act of Assembly aforesaid, if to him, her, or them, it shall seem meet; and how you shall execute this writ, make known unto the said court on the day and at the place aforesaid, and have you then and there this writ. Witness the honorable Richard T. Earle, chief judge of the said court, the 10th day of April, anno Domini one thousand eight hundred and thirty.

Issued the 24th day of September, 1830.

J. R. B. JAMES SEWALL, *Clk.*

At which mentioned third Monday of October, being the eighteenth day of the same month, in the year of our Lord one thousand eight hundred and thirty, and the day of the return of the foregoing writ, came into the county court here the said president, directors, and company of the Farmers Bank of the State of Delaware, by James R. Black, esquire, their attorney aforesaid; and the sheriff of Cecil county aforesaid, to wit, Thomas Miller, jr., gentleman, to whom the said writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

CECIL COUNTY, *sc.*

I hereby certify to the honorable the county court within mentioned that, by virtue of the within writ to me directed, I did attach of the goods and chattels, rights and credits of the within mentioned president and directors of the Elkton Bank of Maryland, in the hands of George Beaston, the sum of five hundred dollars, current money, to and for the use of the within named president, directors, and company of the Farmers Bank of the State of Delaware; and that I made known unto the said George Beaston, by two good and lawful men of my bailiwick, that he be and appear before the county court within mentioned, at the place and on the day within contained, to shew cause why the said sum of money so attached in his hands should not be condemned, and execution thereof had and made to and for the use of the aforesaid president, directors, and company of the Farmers Bank of the State of Delaware, if to him it shall seem meet, as by the said writ I am commanded.

So answers

THOMAS MILLER, junior, *Sheriff.*

And the said George Beaston, garnishee of the said president and directors of the Elkton Bank of Maryland, in whose hands the said sum of five hundred dollars, current money, the goods and chattels, rights and credits, of the said president and directors of the Elkton Bank of Maryland, was so as aforesaid attached, being called, comes into the county court here, by Ezekiel F. Chambers, esquire, his attorney, and defends the force and injury, when, &c. Whereupon, on motion of the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attorney aforesaid, it is ruled by the court here that the said George Beaston answers to the writ of attachment of the said president, and directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid; and thereupon, the said George Beaston, by his attorney aforesaid, prays leave of the court here to impurle until the first Monday of April next and then to answer unto the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid; and he hath it. The same day is given to the said president, directors, and company of the Farmers Bank of the State of Delaware, then and there, &c.

At which said first Monday of April, being the fourth day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, to which said day the said George Beaston had leave to impurle, and then to answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid, come into the county court here, as well the said president, directors and company, of the Farmers Bank of the State of Delaware, as the said George Beaston, by their respective attornies aforesaid. And thereupon, on motion of the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attorney aforesaid, it is ruled by the court here that the said George Beaston answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid. And thereupon, the said Gerge Beaston, by his said attorney, prays further leave of the court here to impurle until the third Monday of October next, and then to answer unto the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid; and he hath it. The same day is given to the said president, directors, and company of the Farmers Bank of the State of Delaware, then and there, &c.

At which said third Monday of October, being the seventeenth day of the same month, in the year of our Lord, one thousand eight hundred and thirty-one, to which said day the said George Beaston had leave to impurle, and then to answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid, come into the county court here, as well the said president, directors, and company of the Farmers Bank of the State of Delaware, by James R. Blach and John C. Groome, esquires, their attornies, as the said George Beaston, by his attorney aforesaid. And thereupon, on motion of the said president,

directors, and company of the Farmers Bank of the State of Delaware, by their attornies aforesaid, it is ruled by the court here that the said George Beaston answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid. And thereupon, the said George Beaston, by his said attorney, prays further leave of the court here to imparle until the first Monday of April next, and then to answer unto the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid; and he hath it. The same day is given to the said president, directors, and company of the Farmers Bank of the State of Delaware, then and there, &c.

At which said first Monday of April, being the second day of the same month, in the year of our Lord one thousand eight hundred and-thirty two, until which day the said George Beaston had leave to imparle, and then to answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid, come into the county court here, as well the said president, directors, and company of the Farmers Bank of the State of Delaware, as the said George Beaston, by their attornies aforesaid; and thereupon, on motion of the said president, directors, and company of the Farmers Bank of the State of Delaaware, by their attornies aforesaid, it is ruled by the court here that the said George Beaston answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the Sate of Delaware, in the plea aforesaid; and thereupon, the said George Beaston, by his attorney aforesaid, prays further leave of the court here to impurle until the third Monday of October next, and then to answer unto the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid; and he hath it. The same day is given to the said president, directors, and company of the Farmers Bank of the State of Delaware, then and there, &c.

At which said third Monday of October, being the fifteenth day of the same month, in the year of our Lord one thousand eight hundred and thirty-two, to which said day the said George Beaston had leave to imparle, and then to answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid, come as well the said president, directors, and company of the Farmers Bank of the State of Delaware, as the said George Beaston, by their attornies aforesaid, into the county court here; and thereupon, on motion of the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attornies aforesaid, it is ruled by the court here that the said George Beaston answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid; and thereupon, the said George Beaston, by his said attorney, prays further leave of the court here to imparle until the first Monday of April next, and then to answer unto the writ of attachment of the said president, directors and company of

the Farmers Bank of the State of Delaware, in the plea aforesaid; and he hath it. The same day is given to the said president, directors, and company of the Farmers Bank of the State of Delaware, then and there, &c.

At which said first Monday of April, being the first day of the same month, in the year of our Lord one thousand eight hundred and thirty-three, until which day the said George Beaston had leave to imparle, and then to answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid, come into the county court here, as well the said president, directors and company of the Farmers Bank of the State of Delaware, as the said George Beaston, by their attornies aforesaid; and thereupon, on motion of the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attornies aforesaid, it is ruled by the court here that the said George Beaston answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid; and thereupon, the said George Beaston, by his said attorney, prays further leave of the court here to imparle until the third Monday of October next, and then to answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid; and he hath it. The same day is given to the said president, directors, and company of the Farmers Bank of the State of Delaware, then and there, &c.

At which said third Monday of October, being the twenty-first day of the same month, in the year of our Lord one thousand eight hundred and thirty-three, until which said day the said George Beaston had leave to impurle, and then to answer to the writ of attachment of the said president, directors, and company of the Farmers Bank of the State of Delaware, in the plea aforesaid, come into the county court here, as well the said president, directors, and company of the Farmers Bank of the State of Delaware, as the said George Beaston, by their attornies aforesaid; whereupon, for that the court here are not advised to give their judgment of and upon the premises aforesaid, day therefore is further given to the said parties, to hear thereof their judgment, until the first Monday of April next, for that the said court here, as yet are not, &c.

At which said first Monday of April, being the seventh day of the same month, in the year of our Lord one thousand eight hundred and thirty-four, until which day this cause was last continued, come into the county court here, as well the said president, directors, and company of the Farmers Bank of the State of Delaware, as the said George Beaston, by their attornies aforesaid; and the said parties, by their said attornies file in court here the following case stated, as also the following exhibits:

Farmers Bank of Delaware vs. *Geo. Beaston, garnishee of the Elkton Bank.*

It is agreed in this case that, in 1828, the United States instituted

suit against the Elkton Bank in the circuit court of the United States; at the December session 1829, a verdict and judgment were rendered in said suit, in favor of the United States, for $21,200; on which judgment a fi. fa. was issued to April term, 1830, and returned nulla bona; but it is admitted that, at that time, the said president and directors of the Elkton Bank had a large landed estate, which has been since sold and applied to satisfy in part the said judgment; which landed estate, together with all other effects or property belonging to the bank, would not enable the bank to pay its debts, and that the same property and effects are insufficient to pay the said debt due to the United States; and it is admitted that the bank was then unable to pay its debts. An appeal was prosecuted, but no appeal bond given, and the judgment was affirmed in the Supreme Court at the January term, 1832. At the April term, 1830, of the circuit court, a bill in equity was filed against the said bank at the suit of the United States; and Nathaniel Williams and John Glenn were appointed, by an order of court, receivers, with authority to take possession of the property of the said bank, to dispose of the same, and to collect all debts due to it, as appears by the record marked exhibit A; which receivers gave bond on the 14th day of June, 1830, and proceeded to execute their trust. The records marked exhibit A and exhibit B, herewith filed, are to be considered as part of this case stated. At December session, 1829, application was made to the Legislature of Maryland, by the several persons who were the acting presidents and the acting directors of the said bank, for the act which was passed at that session, ch. 170, which, with all other acts relating to said bank, are to be considered as part of this statement. A meeting of the stockholders convened on the 17th day of May, 1830, which was the third Monday of said month, but without the publication of the notice mentioned and required in the act incorporating the bank, and its supplements; and at the said meeting a majority of the stockholders appointed two trustees, in conformity with the provisions of said act, who declined accepting, and no trustees have ever been since appointed, nor has there since been an annual or other meeting of the stockholders, or an election of directors, nor have there been any banking operations carried on by any persons professing to be the corporation of the Elkton Bank, since March, 1829. At September term, 1828, the Elkton Bank obtained a judgment against George Beaston, for the sum which is attached in this suit, which, at the time of the issuing and service of this attachment, had not been paid by Beaston. At April term, 1830, the Farmers Bank of Delaware obtained, in Cecil county court, a judgment against the president and directors of the Elkton Bank, for $5,000, with interest from 9 December, 1825, till paid, and costs, and before the appointment and bonding of the receivers as aforesaid, and on the 24th September, 1830, upon that judgment issued this attachment, and attached in the hands of said Beaston the sum of $500; and after this attachment was issued and served, and after the affirmation of the judgment of the circuit court by the Supreme Court, attachment was issued by the United States, and the other proceedings had, as appears

from the record marked B; and Beaston has actually paid, and satisfied to the United States, the amount for which judgment of condemnation was rendered against him in the circuit court. It is admitted that, up to the time of the decision in the Supreme Court, the said receivers never had collected or received, or by any process of law attempted to collect or receive, the said debt attached in this case. The question for the opinion of the court is, whether the plaintiff can sustain the present attachment?

JOHN C. GROOME.
Att'y for pltff.
E. F. CHAMBERS.
For deft.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit*:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first day of November, in the year of our Lord, one thousand eight hundred and thirty-two—present the honorable Gabriel Duvall, one of the associate justices of the Supreme Court of the United States; Elias Glenn, judge of Maryland district; Nathaniel Williams, esquire, attorney; Thomas Finley, esquire, marshal; Philip Moore, clerk.

Among others were the following proceedings, to wit:

The United States vs. *the President and Directors of the Elkton Bank of Maryland.*

Be it remembered that heretofore, to wit, on the ninth day of April, in the year of our Lord one thousand eight hundred and thirty, came the said United States of America, by Nathaniel Williams, their attorney or solicitor, and exhibited their bill of complaint against the president and directors of the Elkton Bank of Maryland, in form following to wit:

To the honorable the judges of the circuit court of the United States in and for the district of Maryland.

The bill of complaint of the United States of America respectfully represents unto your honours that, at the December term, eighteen hundred and twenty-nine, of this honorable court, these complainants obtained a verdict and judgment against the president and directors of the Elkton Bank of Maryland, for the sum of twenty-one thousand two hundred dollars, and costs of suit; that a writ of fieri facias was issued out upon the said judgment, returnable to the first day of this present April term of this court; on which writ the marshal for the Maryland district has returned nulla bona.

These complainants further respectfully represent that their judgment debt aforesaid is in great hazard of being totally lost, unless by the interposition of the equity powers of this court, inasmuch as there exists no personal responsibility for the same; that if the whole

of the estate and claims of the corporation are taken into the possession and subjected to the control of receivers appointed by this court, these complainants entertain a hope that, as such receivers will be under the authority and government of this court, a large part of, if not the whole of, their debt will be ultimately secured, and all other creditors upon the said corporation be secured, so far as the funds of the same will extend to afford security. These complainants herewith file, as a part of this bill, a transcript of the record of the judgment aforesaid, with the fieri facias, and the return thereon, marked exhibit A. Whereupon, these complainants pray redress in the premises, through the interposition of the equity powers of this court, and to that end, that receivers may be appointed to take possession of all the property of the said president and directors of the Elkton Bank of Maryland, with power and authority to dispose of the said property and effects, and collect all debts due to them, and to do all such acts and perform all such duties as fitly appertain to such officers, they duly reporting to, and accounting with, this honorable court for their acts and doings herein; and further, that the said president and directors, their agents, officers, and trustees, may be enjoined from managing, conducting, or controlling the affairs of the said corporation; and, lastly, that subpœnas may issue, directed to the said president and directors, requiring them to appear in this court to answer the premises; and that such other and further order and decree may be passed herein as the nature of the complainants' case requires, and shall seem meet unto your honors. And as in duty, &c.

NATHANIEL WILLIAMS,
Dist. Att'y Md. Dist.

Receivers proposed: Nathaniel Williams and John Glenn.

Mr. Moore: Let subpœnas in this case issue, returnable to the first Monday in June next.

NATH'L WILLIAMS,
6th May, 1830. *Dist. Att'y.*

(Exhibit A, referred to.)

The United States of America, *District of Maryland, to wit:*

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine. Present: the honorable Gabriel Duvall, one of the associate justices of the Supreme Court of the United States; Elias Glenn, judge of the Maryland district; Nathaniel Williams, esquire, attorney; Thomas Finley, esquire, marshal; Philip Moore, clerk.

Among others were the following proceedings, to wit:

The United States vs. *the President and Directors of the Elkton Bank of Maryland.*

Be it remembered, that heretofore, to wit, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and

twenty-eight, the said United States of America, by Nathaniel Williams, attorney of the United States for the Maryland district, prosecuted and sued forth out of the circuit court here the writ of the United States of America, of capias ad respondendum, directed to the marshal of the Maryland district, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *Maryland district, to wit:*

To the marshal for Maryland district, greeting, to wit:

We command you, that you summon the president and directors of the Elkton Bank of Maryland, if they shall be found in your district, and that them, so taken, you safe keep, so that you have their bodies before the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, at the United States court-room, in the city of Baltimore, on the eighth day of December next, to answer unto the United States of America, in a plea of trespass on the case, &c. Hereof fail not at your peril, and have you then and there this writ. Witness the honorable John Marshall, chief justice of our Supreme Court, the first Monday of August, in the year of our Lord one thousand eight hundred and twenty-eight. Issued the 24th day of October, 1828.

[SEAL.]

N. W.

PHILIP MOORE,
Clk. Circt. Ct.

At which mentioned eighth day of December, in the year of our Lord one thousand eight hundred and twenty-eight, being the day of the return of the aforegoing writ, comes into the circuit court here the said United States of America, by their attorney aforesaid; and the marshal of the district of Maryland aforesaid, to wit, Thomas Finley, (gentleman,) to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit, return:—"Summoned Doct. John Groome, prest.; directors—Alexander Scott, Levi Tyson, Adam Wharm, Frisby Henderson, Andrew F. Henderson, Henry H. Gilpin, Joshua Richardson."

THO. FINLEY, *Marshal.*

And the said president and directors of the Elkton Bank of Maryland being called, appear in court here, by Charles Mitchell, their attorney. And thereupon, the said president and directors of the Elkton Bank of Maryland, by their attorney aforesaid, pray that the said United States may declare against them, the said president and directors of the Elkton Bank of Maryland, in the plea aforesaid.

Rule to declare against the bank.

Whereupon, it is ruled by the court here, that the said United States of America declare against the said president and directors of the Elkton Bank of Maryland, in the plea aforesaid; and if the said United States of America do not declare against the said president and directors of the Elkton Bank of Maryland in the plea aforesaid, judgment will be rendered against them by default. And the said United States of America, by their said attorney, pray leave of the court here

to imparle until the eighth day of May next, to declare against the said president and directors of the Elkton Bank of Maryland; and they have it. The same day is given to the said president and directors of the Elkton Bank of Maryland, then, &c.

May term, 1829.

At which said eighth day of May, in the year of our Lord one thousand eight hundred and twenty-nine, until which day the said United States of America had leave to imparle, and then to declare against the said president and directors of the Elkton Bank of Maryland in the plea aforesaid, comes as well the said United States of America, by their attorney aforesaid, as the said president and directors of the Elkton Bank of Maryland, by their attorney aforesaid; and the said United States of America, by their attorney aforesaid, declare against the said president and directors of the Elkton Bank of Maryland, in the plea aforesaid, in form following, to wit:

THE UNITED STATES OF AMERICA, *Maryland district, sc.*

Declaration.

The president and directors of the Elkton Bank of Maryland were summoned to answer unto the United States of America, in a plea of trespass on the case, &c.

And whereupon, the United States of America, by Nathaniel Williams, attorney of the United States in and for the district of Maryland, complain for that, whereas the said the president and directors of the Elkton Bank of Maryland, the defendants in this cause, on the first day of March, in the year eighteen hundred and twenty-five, to wit, at the district aforesaid, were indebted to the said United States, in the sum of thirty thousand dollars, for divers goods, wares, and merchandize, by the said United States before that time sold and delivered to the said defendants, and at their special instance and request, and also in a like sum for money by the said United States before that time lent and advanced to and paid, laid out, and expended for the said defendants, and at their like special instance and request; and, also, in a like sum for other money by the said defendants before that time had and received to and for the use of the said United States; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said United States, to pay them the said several sums of money in this count mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit, on the day and year aforesaid, at the district aforesaid, accounted with the said United States of and concerning divers other sums of money, before that time due and owing from the said defendants to the said United States, and then being in arrear and unpaid, and upon such accounting, the said defendants were then and there found to be in arrear and indebted to the said United States in another large sum of money, to wit, in the further

sum of thirty thousand dollars; and being so found in arrear and indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and faithfully promised the said United States, to pay them the last mentioned sum of money, when the said defendants should be thereto afterwards requested. Nevertheless, the said defendants, not regarding their said promises and undertakings, have not yet paid the aforesaid several sums of money, or either of them, or any part of either of them, to the said United States, (although so to do the said defendants were requested by the said United States, to wit, on the day and year aforesaid, and often afterwards, at the district aforesaid,) but to pay the same, the said defendants have hitherto altogether refused, and do still refuse so to do, to the damage of the said United States fifty thousand dollars; and thereupon they bring suit, &c.

NATH. WILLIAMS,
Dist. Att'y Md. Dist.

Thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here, thereon is further continued until the eighth day of December next. At which said eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, come again into the circuit court here, as well the said United States of America, by their attorney aforesaid, as the said president and directors of the Elkton Bank of Maryland, by their attorney aforesaid. And the said president and directors of the Elkton Bank of Maryland, by their attorney aforesaid, file in the circuit court here the following pleas, to wit:

The President and Directors of the Elkton Bank of Maryland advs. *The United States.*	Circuit court of the United States, fourth circuit, Maryland district. Action of assumpsit. Pleas.

1st plea.

And the said defendants, the president and directors of the Elkton Bank of Maryland, comes and defends the wrong and injury, when, &c., and saith that the said corporation did not undertake or promise, in manner and form as the plaintiff (the United States) hath above thereof complained against it; and of this, the said corporation, the said defendant, puts itself upon the country, &c.

CHS. MITCHELL,
Defend'ts Atty.

Issue.—2d plea.

And the said United States of America, in like mannner, &c.

And for further plea in this behalf, the said defendant, the president and directors of the Elkton Bank of Maryland, by Charles

Mitchell, its attorney, saith, leave of the court here for this purpose being first had and obtained according to the statute in such case made and provided, that the United States, the said plaintiff, ought not to have or maintain the action aforesaid against the said corporation, because the said defendant saith that the said corporation did not, at any time within three years next before the day of impetrating of the original writ of the United States in this cause against the said defendant, undertake or promise in manner and form as the said United States hath above complained; and this the said defendant is ready to verify. Wherefore, the said defendant prays judgment, if the said United States ought to have or maintain the action aforesaid against said defendant.

And the said defendant, by its attorney aforesaid, and with the leave of the court here first had and obtained according to the form of the statute in such case made and provided, further comes and defends the wrong and injury, when, &c., and saith that the United States, the action aforesaid against the said defendant to have or maintain ought not, because the said defendant saith that the action of the United States did not first accrue, nor did any of the said causes of action first accrue against the said defendant within three years next before the day of the commencement of this suit, by the issuing the original writ of the United States against the said defendant in this cause; and this the said defendant is ready to verify, &c. Wherefore, the said defendant prays judgment, if the said plaintiff ought to have or maintain the aforesaid action thereof against said defendant, &c.

And for further plea in this behalf, leave of the court being first had and obtained for that purpose according to the statute in such case made and provided, the said defendant, by its attorney aforesaid, further defends the wrong and injury, when, &c., and saith that the United States, the said plaintiff, its action aforesaid against the said defendant ought not to have or maintain, because the said defendant saith that after the said supposed promises and undertakings, in the plaintiffs declaration mentioned, if any, were made, and before the commencement of this suit, to wit, on the thirteenth day of February, in the year of our Lord, one thousand eight hundred and nineteen, the said plaintiffs, by the authorized agent of the plaintiffs, received and accepted from the said defendant an assignment, transfer, and delivery of a certain bond or writing obligatory, sealed with the seals of George Davidson and Philip Thomas, both of Cecil county, in the State of Maryland, and bearing date on the twenty-second day of September, in the year eighteen hundred and eighteen, whereby the said Philip and George acknowledged themselves, and each of them, himself, jointly and severally, and their and each of their heirs, executors, and administrators, to be held and firmly bound unto the president and directors of the Elkton Bank of Maryland, in the penal sum of twenty-eight thousand five hundred dollars, current money, to be paid to the said president and directors of the Elkton Bank of Maryland, their successors or assigns, with condition, there underwritten, that if the said Philip Thomas should pay, or cause to be

paid, on or before the first January, in the year of our Lord one thousand eight hundred and twenty, to the said president and directors of the Elkton Bank of Maryland, their lawful attorney, successors, or assigns, the just and full sum of fourteen thousand two hundred and fifty dollars, with legal interest thereon from the date of said bond until paid, then the said obligation to be void, else to be and remain in full force and virtue in law; which said bond or writing obligatory was, on the day and year first in this plea above mentioned, duly assigned, transferred, and set over, by the said corporation, under its corporate seal and the signature of its president, unto the said United States, and by the said United States, thro' their proper agent, duly authorized thereto, accepted, in full satisfaction and discharge of the several promises and undertakings in the said declaration mentioned, and of all damages and sums of money due or owing thereupon, or thereupon accrued; and this the said defendant is ready to verify, &c.

Wherefore, the said defendant prays judgment, if the United States ought to have or maintain the aforesaid action thereof against this defendant. And for further plea in this behalf, by leave of the court here first had and obtained therefor according to the statute in such case made and provided, the said defendant, by its attorney aforesaid, saith that the United States ought not to have or maintain the action aforesaid against the said defendant, because the said defendant saith that after the said several supposed promises and undertakings, in the declaration aforesaid mentioned, were made, if any such were made, and before the commencement of this suit, the said plaintiff, by the authorized agent of the United States, received and accepted from the defendants an assignment and transfer, under the seal of the defendant and signature of the president of the said corporation, duly executed, of a certain bond or writing obligatory of one Philip Thomas and one George Davidson, both of Cecil county, in the State of Maryland, duly executed by them, the said Thomas and Davidson, payable to the said defendant, its successors or assigns, under the seals, in the penal sum of twenty-eight thousand five hundred dollars, bearing date the twenty-second day of September, one thousand eight hundred and eighteen, conditioned for the payment by Philip Thomas of the sum of fourteen thousand two hundred and fifty dollars, with legal interest from the date of said bond, on or before the first day of January, in the year one thousand eight hundred and twenty, to the president and directors of the Elkton Bank of Maryland, their lawful attorney, successors, or assigns; which assignment aforesaid was made and accepted as aforesaid in the district of Maryland, on the thirteenth day of February, eighteen hundred and nineteen, and was made and given by the said defendant at the special instance of the said United States, with an express agreement and understanding at that time between the said defendant and the said agent of the United States, who received the said assignments, that the United —— should, without delay, immediately after the day of payment mentioned in the condition of said bond, commence suit thereon, and proceed diligently to collect the same, by due pro-

cess of law, against and from the said obligors, if the condition of said bond should not be strictly complied with on or before that day; and the said defendant avers that, at the time of the said assignment, the whole sum mentioned in the condition of the said bond was justly due and owing from the said obligors to the said defendant, to be paid on or before the said first day of January, eighteen hundred and twenty, and that no part thereof hath since been paid to the defendant. And further, that when the said bond became due and payable by the said condition, the said obligors were solvent and able to pay the same, and so continued to be until the same might have been collected from them by due process of law, if the United States had complied with the said agreement and undertaking, and had immediately, after the day of payment had passed, had put the said bond in suit against the said obbligors; but instead thereof, the said United States, notwithstanding the said condition of said bond was broken and the money therein mentioned not paid on or before the day mentioned therein, wholly neglected and refused to commence suit thereon against either of the said obligors, but on the contrary gave the said Philip Thomas further and longer time for the payment thereof, until said obligors became insolvent, without notice to this defendant, or without the consent or concurrence of this defendant; and the said Thomas and Davidson have, since the said delay and indulgence was granted as aforesaid by the plaintiff, become utterly insolvent and unable to satisfy the said debt; by means whereof the said debt hath been utterly lost, though the negligence and fault of the United States as aforesaid, except so far as payments thereon have been made to the said plaintiff. And the defendant further saith that the said sum of money in the condition or the said bond mentioned was sufficient to have paid and satisfied all the said supposed promises and undertakings of this defendant, in the said declaration mentioned, and the plaintiff's damages, and was so admitted and accepted by the said agent of the United States, when the said assignment was accepted them, and the plaintiff still holds and retains the said bond; and so the defendant saith it hath paid and satisfied, in manner and form aforesaid, all the supposed promises and undertakings in the plaintiff's declaration mentioned, and this the said defendant is ready — verify, &c. Wherefore, the defendant prays judgment, if the said plaintiff ought to have or maintain the action aforesaid against the said defendant.

CH. MITCHELL, *Def. Att'y.*

General demurrer to the 2d plea.

Whereupon, the said United States of America, by their attorney aforesaid, say that the second plea above pleaded aforesaid by the said president and directors of the Elkton Bank of Maryland, in manner and form aforesaid, and the matters in the same contained, are not sufficient in law to preclude them, the said United States of America, from having and maintaining their action aforesaid thereof against them, the said president and directors of the Elkton Bank of Maryland; to which said plea, in manner and form aforesaid above pleaded,

they, the said United States of America, have no necessity, nor are by the law of the land obliged in any manner to answer; and this they are ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said United States of America pray judgment, and their damages aforesaid, to be adjudged unto them, &c.

Joinder.

Whereupon, the said president and directors of the Elkton Bank of Maryland, by their attorney aforesaid, say that the second plea, above by them as aforesaid in manner and form as aforesaid pleaded, and the matters in the same contained, are good and sufficient in law to preclude them, the said United States of America, from having and maintaining their action aforesaid thereof against them, the said president and directors of the Elkton Bank of Maryland; which said plea and the matters therein contained, the said president and directors of the Elkton Bank of Maryland are ready to verify and prove, as the court, &c.

Judgment.

And because the said United States of America do not answer to that plea, nor the same hitherto deny, the said president and directors of the Elkton Bank of Maryland, as before, pray judgment, and that the said United States of America may be precluded from having or maintaining their action aforesaid thereof against them, the said president and directors of the Elkton Bank of Maryland, &c. Whereupon, all and singular the said premises being seen and fully considered by the court here, for that it appears to the court here that the said plea of the said president and directors of the Elkton Bank of Maryland, secondly above by them pleaded in bar, and the matters therein contained, are not sufficient in law to preclude the said United States of America from having and maintaining their action against the said president and directors of the Elkton Bank of Maryland, in manner and form as the said United States of America have above alleged. Therefore, it is considered by the court here that the said United States of America recover against the said president and directors of the Elkton Bank of Maryland the sum of fifty thousand dollars, current money, their damages aforesaid, which they had sustained by reason of the non-performance of the promises and assumptions aforesaid, as also the sum of by the court here, unto the said United States of America, on their assent adjudged for their costs and charges by them, about their suit in this behalf, laid out and expended. And the said president and directors of the Elkton Bank, in mercy, &c.

General demurrer to the 3d plea.

Whereupon, the said United States of America, by their attorney aforesaid, say that the third plea above pleaded aforesaid by the said president and directors of the Elkton Bank of Maryland, in manner and form aforesaid, and the matters in the same contained, are

not sufficient in law to preclude them, the said United States of America, from having and maintaining their action aforesaid thereof against them, the said president and directors of the Elkton Bank of Maryland; to which said plea, in manner and form aforesaid above pleaded, they, the said United States of America, have no necessity, nor are, by the law of the land, obliged in any manner to answer; and this they are ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said United States of America pray judgment, and their damages aforesaid, to be adjudged to them, &c.

Joinder.

Whereupon, the said president and directors of the Elkton Bank of Maryland, by their attornies aforesaid, say that the said third plea above by them as aforesaid in manner and form aforesaid pleaded, and the matters in the same contained, are good and sufficient in law to preclude them, the said United States of America, from having or maintaining their action aforesaid thereof against them, the president and directors of the Elkton Bank of Maryland; which said plea and the matters therein contained, the said president and directors of the Elkton Bank of Maryland are ready to verify and prove, as the court, &c. And because the said United States of America do not answer to that plea, nor the same hitherto deny, the said president and directors of the Elkton Bank of Maryland, as before, pray judgment, and that the said United States of America may be precluded from having or maintaining their action aforesaid thereof against them, the said president and directors of the Elkton Bank of Maryland, &c.

Whereupon, all and singular the said premises being seen and fully understood by the court here, for that it appears to the court here that the said plea of the said president and directors of the Elkton Bank of Maryland, thirdly above by them pleaded in bar, and the matters therein contained, are not sufficient in law to preclude the said United States of America from having and maintaining their said action against the said president and directors of the Elkton Bank of Maryland, in manner and form as the said United States of America have above alleged.

Judgment.

Therefore, it is considered by the court here that the said United States of America recover against the said president and directors of the Elkton Bank of Maryland, as well the sum of fifty-thousand dollars, current money, for their damages, which they had sustained by reason of the non-performance of the promises and assumptions aforesaid, as also the sum of by the court here, unto the said United States of America, on their assent, adjudged for their costs and charges, by them about their suit in that behalf, laid out and expended; and the said president and directors of the Elkton Bank of Maryland, in mercy, &c.

And, thereupon, the said United States of America, by their attorney aforesaid, file, in the circuit court here, their replication to the

fourth plea of the said president and directors of the Elkton Bank of Maryland, above by them pleaded, in form following, to wit:

Replication and issue to the 4th plea.

And the said United States, as to the plea of the said president and directors of the Elkton Bank of Maryland, by them fourthly above pleaded, say that the said United States, by reason of any thing by the said defendants in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the defendants, because the plaintiffs say they did not accept in full satisfaction and discharge of the several promises and assumptions in the said declaration mentioned, and of all damages and sums of money due and owing thereupon, or thereupon accrued, an assignment, transfer, and delivery of a certain bond or writing obligatory, signed and executed by a certain Philip Thomas and George Davidson, to and in favor of the defendants, their successors or assigns, as described in the said plea of the defendants, nor an assignment, transfer, and delivery of any other bond or writing obligatory, in manner and form as the defendants have above alleged; and this the plaintiffs pray may be enquired of by the country, &c. And the said president and directors of the Elkton Bank of Maryland, in like manner, &c.

Replication and issue to the 5th plea.

And the said United States, as to the plea of the defendants by them fifthly above pleaded, say that the plaintiffs, by reason of any thing by the defendants in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the defendants, because, protesting that the debt in the said plea referred to and described as due from the said Philip Thomas was not lost through the neglect and default of the United States. Nevertheless, for further plea in this behalf, by way of replication, the plaintiffs say that there was no express or other agreement or understanding, at the time of the assignment of the bond or writing obligatory of the said Philip and George, as in said plea described, nor at any other time, between the defendants and the agent of the plaintiffs who received the said assignment, that the plaintiffs should, without delay, immediately after the day of payment mentioned in the condition of said bond, commence suit thereon, and proceed diligently to collect the same, by due process of law against the said obligors, if the condition of the said bond should not be strictly complied with on or before that day, in manner and form as the defendants have above alleged; and this the plaintiffs pray may be enquired of by the country, &c. And the said president and directors of the Elkton Bank of Maryland, in like manner, &c. Therefore, let a jury thereon appear before the court here immediately, by whom, &c., who neither, &c., to recognize, &c., because as well, &c.

Jury—Verdict.

Whereupon, for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the pannel of pettit jurors,

returned to the court here by the marshal of the district of Maryland aforesaid, be drawn by ballot; and, thereupon, the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon, the remaining twelve persons being called, come, to wit, Peter Little, James Piper, Henry McPherson, John M. Wyse, John J. Randall, David Clendennin, Thomas Hutchins, John Braddock, Edward Crow, James Pannell, Robert Purviance, Jesse Slingliff; who, being impannelled and sworn to say the truth in the premises, upon their oath do say that the said president and directors of the Elkton Bank of Maryland did assume upon themselves in manner and form as the aforesaid United States of America within against them have complained, and they assess the damages of the said United States of America, sustained by reason of the non-performance of the promises and assumptions aforesaid, to the sum of twenty-one thousand two hundred dollars, current money.

Judgment.

Therefore, it is considered by the court here, that the aforesaid United States of America recover against the said president and directors of the Elkton Bank of Maryland, as well the sum of twenty-one thousand two hundred dollars, current money, their damages aforesaid by the jurors aforesaid in form aforesaid assessed to be sustained by evasion of the non-performance of the promises and assumptions aforesaid, as the sum of by the court here unto them, the said United States of America, on their assent, adjudged, for their costs and charges by them, about their suit in this behalf, laid out and expended. And the said president and directors of the Elkton Bank of Maryland, in mercy, &c.

Memorandum.

Judgment rendered in this cause on the 14th day of December, in the year of our Lord 1829, for the damages laid in the declaration, and costs. The said damages to be released on payment of the sum of twenty-one thousand two hundred dollars, with interest thereon from the 14th day of December, 1829, till paid, and costs of suit.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the president and directors of the Elkton Bank of Maryland, by their attorney, aforesaid, tendered to the court here the following bills of exception, which were signed and sealed by the court here, and which are in form following, to wit:

Defendant's first exception.

The United States, vs. *The president and directors of the Elkton Bank of Maryland.*	Action on the case.—First exception.

In the progress of this cause, the plaintiffs, in order to support the

issue on their part, offered in evidence to the jury the following paper, as an original deed of mortgage from Philip Thomas to the defendants, with the paper-writing attached thereon, and proved, by legal and competent evidence, that the said paper was in the handwriting of Tobias Rudolph, now deceased, whereas, at the date of said paper, long before and after, one of the directors of the said bank, and their counsel in the law; and also proved, by the same testimony, that the seal affixed thereto was the public seal of the defendants.

Mortgage from Philip Thomas to the Elkton Bank.

This indenture, made this 22d day of September, in the year of our Lord one thousand eight hundred and eighteen, between Philip Thomas, esq., of Cecil county, gentleman, of the one part, and the president and directors of the Elkton Rank of Maryland, of the other part. Whereas, John W. Thomas, one of the children and heirs at law of Philip Thomas, late of Cecil county, deceased, by a due course of legal proceedings had in Cecil county court, under the act to direct descents, became the owner and sole proprietor of all the real estate whereof the said Philip Thomas, his father, died seized in said county; and whereas the said John W. Thomas, by his deed, bearing date on the 13th day of August, one thousand eight hundred and twelve, for the consideration therein mentioned, amongst other things, conveyed in fee simple to the above named Philip Thomas, party to these presents, all that tract of land lying in Cecil county, called "Yorkshire," containing six hundred and seventy-five acres of land, more or less, as also one hundred acres of land, mentioned and described in the aforesaid deed of the said John W. Thomas as being all that plantation or tenement of land in New Connaught Manor, sold to Philip Thomas the elder by a certain George Welch, as, by the deed of the said George W. Thomas, duly executed, acknowledged, and recorded, to which particular reference is hereby made, will more fully and at large appear; and whereas the said Philip Thomas, party to these presents, by his bonds, bearing even date herewith, stands indebted to the president and directors of the Elkton Bank of Maryland, in the penal sum of forty thousand dollars, conditioned for the payment of twenty thousand dollars, current money, with legal interest thereon from the date of the said bond. Now, this indenture witnesseth that the said Philip Thomas, for and in consideration of the aforesaid sum of twenty thousand dollars, current money, due and owing to the president and directors of the Elkton Bank of Maryland as aforesaid, as also for and in consideration of —— sum of five shillings, to him in hand paid by the said president and directors, the receipt whereof he doth hereby acknowledge, hath bargained, sold, aliened, released, enfeoffed, and confirmed, and by these presents doth bargain, sell, alien, release, enfeoff, and confirm, unto them the said president and directors of the Elkton Bank of Maryland aforesaid, their successors and assigns, all that tract of land as aforesaid called "Yorkshire," together with all that aforesaid plantation or tenement

of land containing one hundred acres, sold to Philip Thomas the elder by George Welsh, as mentioned and described in the deed aforesaid of John W. Thomas to the said Philip Thomas, excepting and reserving out of this grant eighty acres, part of the tract called "Yorkshire," heretofore sold and conveyed by the said Philip Thomas, party to these presents, to George Davidson, as by the deed of him, the said Philip Thomas, to the said George Davidson, bearing date on the day of reference being thereunto had will fully and at large appear; to have and to hold the said land and tenements, together with their appurtenances (except as before excepted) unto them, the said president and directors, their successors and assigns, to and for their only proper use, benefit, and behoof, and to and for no other use, purpose, or interest, whatever. Provided, nevertheless, and it is the true intent and meaning of the parties to these presents, that, if the said Philip Thomas, his executors, or administrators, shall, on or before the first day of January, which will be in the year of our Lord one thousand eight hundred and twenty, well and truly pay, or cause to be paid, unto the aforesaid president and directors of the Elkton Bank of Maryland, or their successors, the aforesaid sum of twenty thousand dollars, with legal interest thereon from the date of these presents, then, and upon that condition, the aforesaid deed or instrument of writing, grant, sale, and enfeoffment to be utterly void and of no effect, and the lands and tenements therein mentioned to revert, remain, and continue the right, property, and estate of the said Philip Thomas and his heirs, in as full and ample a manner as though the same had never been executed; otherwise to be and remain undefeasibly the right, property, and estate of the said president and directors of the Elkton Bank of Maryland, their successors and assigns in fee simple. In testimony whereof, the said Philip Thomas hath hereunto set his hand and affixed his seal on the day and year first above written.

PHILIP THOMAS, [SEAL.]

Signed, sealed and delivered in the presence of
GEO. DAVIDSON,
NAT. CHEW.

Received, on the day and year first above written, the consideration-money within mentioned.

PHILIP THOMAS.

Witness:
GEO. DAVIDSON.

MARYLAND, *Cecil county, sc.*

Be it remembered that, on this twenty-second day of September, in the year of our Lord, one thousand eight hundred and eighteen, personally appeared before us, the subscribers, justices of the peace for Cecil county, Philip Thomas, party, grantor within named, and acknowledged the within deed or instrument of writing to be his act and deed, for the uses and purposes therein mentioned.

Acknowledged before us,

NAT. CHEW,
GEO. DAVIDSON.

MARYLAND, *Cecil county, sc.*

Rec'd, 4th February, 1819, and on the same day recorded and examined, the within mortgage in liber J. S. No 16, folio 18, one of the land record books of the county aforesaid.

[SEAL.] In testimony whereof, I hereto set my hand and affix*ed* my seal of office, the day and year aforesaid.

JAMES SEWALL, *Cl'k.*

Whereas on the 15th day of February, A. D. 1819, a copy of the annexed and aforegoing mortgage was assigned by the Elkton Bank of Maryland to William Wharm, as agent for the Treasury of the United States, as collateral security for the payment of twenty thousand dollars, on that day due the said United States, as p'r account then settled with the said William Wharm, agent as aforesaid, which assignment is said to be lost or mislaid, and for the purpose of placing the said transaction upon the same footing on which it then stood, this present assignment is made. For the consideration aforesaid, and to secure to the said United States, the payment of the said twenty thousand dollars, together with interest thereon from the said 15th day of February, 1819, we, the president and directors of the Elkton Bank of Maryland do, this 1st day of May, 1824, assign, transfer, and set over to the United States and to their proper officers and agents, the annexed and aforegoing mortgage, and the bonds therein mentioned, and the debt or sum of money therein due.

In testimony whereof, the said president and directors of the Elkton Bank of Maryland, have caused the corporate seal [SEAL.] of the said institution to be hereunto affixed, this 1st day of May, A. D. 1824.

To the admissibility of which evidence, without further evidence that such had been made for the original contract in said paper referred to, and the same not found, or that the same had been lost, it being admitted that the original agreement was in writing, as appears by the paper aforesaid, of the 1st May, 1824, the defendants, by their counsel, objected; but the court overruled the objection, and held the evidence admissible. To which admission the defendants, by their counsel, prayed leave to except, and that the court here would sign and seal this, their first bill of exception; which is accordingly done, this 15th day of December, 1829.

G. DUVALL. [SEAL.]
ELIAS GLENN. [SEAL.]

Defend'ts. 2nd exception.

The United States,
vs.
The President and Directors, of the Elkton Bank of Maryland.
Case.
2nd exception.

The plaintiffs, to support the issue on their part, called James Sewall, a competent witness, who testified he was director of the Elkton

Bank during the years 1819, 1820, and thence to 1824. That during that period, Tobias Rudolph, esq. (now dead) was attorney for the bank in Cecil county, and, as such, carried on its suits here, and as their legal counsel in all cases (except that he did not conduct suits out of said county) drew its writings, and did the other business of the attorney of the corporation; and that said Rudolph was a director of the said bank from before 1819 until about 1824; but being examined by the defendants' counsel, he testified that during this period, he, the witness, never knew that any authority was ever given to Rudolph — any letters for the bank, or to do any other act, other than pertained to the business of an attorney in Cecil and counsel as aforesaid; that while he was president of the bank, he wrote all his own letters; and F. Henderson, who succeeded him in the office, being called, testified that he never knew of Rudolph's being authorized to write letters for the bank, or that he ever wrote any; that he, said Frisby Henderson, sometimes wrote the letters, and sometimes the cashier wrote them, and then he, the said Frisby Henderson, signed them; whereupon the plaintiffs offered in evidence, the following letter, admitted to be in Rudolph's hand-writing.

ELKTON, *September 25th*, 1824.

GENTLEMEN: The cashier of the Elkton Bank of Maryland has this day communicated to me your joint letter, containing the terms upon which Mr. Philip Thomas is about to settle the claim which the United States now holds against him, as assignees of this institution. As attorney for the bank, I reply that the board have had a conversation with Mr. Thomas on the subject, and are perfectly satisfied and desirous that the claim should be settled and paid off upon the terms and in the manner stated in your letter. Should you require any further or more official confirmation of the arrangement, be pleased to notice to me the form in which you desire to —— corporation to give their assent, and it shall be done.

Very respectfully, gentlemen, yours,
TOB'S RUDOLPH,
Attorney for the Elkton Bank.

U. S. HEATH and
N. WILLIAMS, Esq.

To the admission of which the defendants objected, on the ground of his want of authority to write it, and because the letter was not offered in evidence to which it professes to be an answer, and is incompetent evidence against the defendants; but the court overruled the objection, and held the evidence admissible. To which admission, the defendants, by their counsel, prayed leave to except, and that the court here would sign and seal this, their second bill of exception; which is accordingly done, this 15th day of December, 1829.

G. DUVALL. [SEAL.]
ELIAS GLENN. [SEAL.]

Afterwards, to wit, on the 15th day of December, in the year of our Lord, one thousand eight hundred and twenty-nine, the aforesaid

president and directors of the Elkton Bank of Maryland, by their attorney aforesaid, produced in the said circuit court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the second Monday in January next; which said writ of error is in the words and of the tenor following, to wit.

UNITED STATES OF AMERICA, *sc.*

The President of the United States, to the judges of the circuit court of the United States for the district of Maryland, greeting:

[SEAL.] Because, in the record and proceedings as also in the rendition of the judgment of a plea, which is in the said circuit court, before you or some of you, between the United States of America, plaintiffs, and the president and directors of the Elkton Bank of Maryland, defendants, a manifest error hath happened to the great damage of the said president and directors of the Elkton Bank of Maryland, as by this complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done. Witness the Hon. John Marshall, chief justice of our Supreme Court, the third day of August, in the year of our Lord one thousand eight hundred and twenty-nine.

Issued 18th day of December, 1829.

PHILIP MOORE,
Cl'k Circ't Ct.

In pursuance whereof, and according to the form and effect of the act of the Congress of the United States in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

Citation.

To the United States of America or their attorney, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at the city of Washington on the

second Monday of January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein the United States of America are plaintiffs, and the president and directors of the Elkton Bank of Maryland are defendants, to show cause, if any there be, why the judgment rendered against the said president and directors of the Elkton Bank of Maryland, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf. Witness my hand and seal, this ninth day of January, 1830.

ELIAS GLENN, [SEAL.]
Dist. Judge.

I hereby acknowledge service of the aforegoing citation.
NATH. WILLIAMS, *Dist. Atty.*

Bond for costs.

Know all men by these presents, that we, Levi Tyson, Joshua Richardson, and Alexander Scott, of Cecil county, in the State of Maryland, are held and firmly bound unto the United States of America, in the just and full sum of two hundred and fifty dollars, current money of the United States, to be paid to the said United States of America, their certain attorney or assigns, to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated this twentieth day of January in the year of our Lord, one thousand eight hundred and thirty. Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, the said United States of America, by the judgment of the same court, recovered against the president and directors of the Elkton Bank of Maryland the sum of twenty-one thousand two hundred dollars, current money, for their damages which they had sustained by reason of the non-performance of certain promises and assumptions, by the said president and directors of the Elkton Bank of Maryland to the said United States America before that time made, and their costs of suit in that behalf laid out and expended. And whereas, the said president and directors of the Elkton Bank of Maryland have sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said United States of America or their attorney, citing and admonishing them to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the second Monday in January then next, to show cause, if any there be, why the judgment rendered against the said president and directors of the Elkton Bank of Maryland, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf. Now, the condition of the aforegoing obligation is such, that, if the said president and directors of the Elkton Bank of

Maryland shall, upon failure to well and truly prosecute with effect their said writ of error, pay to the said United States of America the costs and charges which have been adjudged unto them in the said circuit court, and also all such costs and charges which may be awarded by the said Supreme Court of the United States, in case they, the said president and directors of the Elkton Bank of Maryland, shall fail to make their plea good, then the above obligation to be void; otherwise to be and remain in full force and virtue.

LEVI TYSON, [SEAL.]
JO. RICHARDSON, [SEAL.]
ALEX. SCOTT. [SEAL.]

Signed, sealed, and delivered, in the presence of
WM. WINGATE.

Afterwards, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and thirty, the said United States of America, by their attorney aforesaid, prosecuted and sued forth out of the circuit court here the writ of the said United States of America of fieri facias, on the judgment aforesaid, in form following, to wit:

UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To the marshal of the Maryland district, greeting:

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, the United States of America, by the judgment of the same court, recovered against the president and directors of the Elkton Bank of Maryland, as well the sum of fifty thousand dollars, current money, for their damages, which they had sustained by reason of the non-performance of certain promises and assumptions, by the said president and directors of the Elkton Bank of Maryland to the said United States of America before that time made, as the sum of one hundred and seventy-eight dollars and forty-one cents, for their costs and charges by them about their suit in that behalf laid out and expended, whereof the said president and directors of the Elkton Bank of Maryland are convict, as of record is manifest. Therefore, you are hereby commanded that, of the goods and chattels, lands and tenements of the said president and directors of the Elkton Bank of Maryland, in your district being, you, cause to be made and levied the damages, costs, and charges aforesaid; and have you those sums of money before the said circuit court, to be held at the city of Baltimore, on the eighth day of May next, to render unto the said United States of America the damages, costs, and charges aforesaid. Hereof fail not at your peril, and have you then and there this writ. Witness the honorable John Marshall, chief justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and thirty.

PHILIP MOORE,
Cl'k Circ't Ct.

N. W. Issued 1st day of February, 1830.

Endorsed.—No. 5. The United States vs. the president and directors of the Elkton Bank of Maryland.

F. fs. dame. - - - - - - -	$50,000 00
Costs - - - - - - - - - -	178 41
Add - - - - - - - - - -	60

To be released on payment of $21,200, with interest from 14th December 1829, and costs.

Judgment 14th December, 1829. N. W.

And now here on this day, to wit, the eighth day of April, in the year of our Lord one thousand eight hundred and thirty, being the day of the return of the aforegoing writ, comes into the circuit court here, as well the said United States of America, by their attorney aforesaid, as the marshal of the Maryland district aforesaid, to wit, Thomas Finley, gentleman, to whom the said aforegoing writ, was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Return.—"Nulla bona"

THOMAS FINLEY, *Marshal.*

And now here on this day, to wit, the fourth day of April, in the year of our Lord one thousand eight hundred and thirty-two, the said United States of America, by their attorney, file in the circuit court here a mandate from the Supreme Court of the United States in the words, and of the tenor following, to wit:

Mandate.

UNITED STATES OF AMERICA, *sc.*

The president of the United States of America, to the honorable the judges of the circuit court of the United States for the district of Maryland, greeting:

Whereas, lately in the circuit court of the United States for the district of Maryland, before you or some of you, in a [SEAL.] cause wherein the United State of America were plaintiffs, and the president and directors of the Elkton Bank of Maryland were defendants, the judgment of the said circuit court was in the following words, and figures, to wit:

Therefore, it is considered by the court here that the aforesaid United States of America recover against the said president and directors of the Elkton Bank of Maryland, as well the sum of twenty-one thousand two hundred dollars, current money, their damages aforesaid, by the jurors aforesaid in form aforesaid assessed to be sustained by occasion of the non-performance of the promises and assumptions aforesaid, as the sum of $ by the court here, unto them the said United States of America, on their assent, adjudged for their costs and charges by them about their suit in this behalf laid out and expended. And the said president and directors of the Elkton Bank of Maryland, in mercy, &c.

Memorandum.—Judgment rendered in this cause, on this fourteenth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, for the damages laid in the declaration, and costs. The said damages to be released on payment of the sum of twenty-one thousand two hundred dollars, with interest thereon from the fourteenth day of December, eighteen hundred and twenty-nine, till paid, and costs, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large, appear; and whereas, in the present term of January, in the year of our Lord one thousand eight hundred and thirty-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel; on consideration whereof, it is adjudged and ordered, that the judgment of the said circuit court in this cause be and the same is hereby affirmed, with costs and damages at the rate of six per centum per annum.

JAN'Y 18th, 1832.

You are, therefore, hereby commanded, that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding. Witness the honorable John Marshall, chief justice of said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-two.

Costs.—Clerk - - - - - - -	$19 76
Attorney - - - - - - -	20 00
	$39 76

Taxed by Wm. Tho. Carroll, clerk of the Supreme Court of the United States.

In testimony that the aforegoing is a true copy, taken from the record and proceedings of the circuit court aforesaid, I [SEAL.] hereunto subscribe my name, and affix the seal of the said circuit court, this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and thirty-three.

PHILIP MOORE,
Cl'k Circ't Ct.

Whereupon, subpœna issued as prayed, in form following, to wit:

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To the president and directors of the Elkton Bank of Maryland, greeting:

You and each of you are hereby commanded that, all excuses set apart, you and each of you personally appear before the circuit court of the United States for the fourth circuit in and for the Maryland district, at the Masonic Hall, in the city of Baltimore, on

the first Monday in June next, to answer unto the complaint of the United States of America against you in the said court exhibited. Hereof fail not, as you will answer the contrary at your peril. Witness the honorable John Marshall, chief justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and thirty.

PHILIP MOORE,
Cl'k Circ't Ct.

N. W. Issued 22d May, 1830.

At which said first Monday in June, in the year of our Lord one thousand eight hundred and thirty, being the return day of the aforegoing writ of subpœna, come into the circuit court here the said United States of America, by their attorney or solicitor aforesaid; and the marshal of the district of Maryland aforesaid, makes return of the said subpœna to the circuit court here, thereon endorsed to wit:

"May 25th 1830. Served on Frisby Henderson, Joshua Richardson, Adam Wharm, Alexander Scott.

THO. MOORE, *D. M.*

50 miles, Andrew Henderson.

THO. FINLEY, *Marshal.*

And the said president and directors of the Elkton Bank of Maryland, being called, appear in the circuit court here, by Charles Mitchell, their attorney or solicitor. Afterwards, to wit, on the twelfth day of June, in the year of our Lord one thousand eight hundred and thirty, the circuit court here passed the following interlocutory decree, to wit:

The United States vs. *The President and Directors of the Elkton Bank of Maryland.*	Circuit court United States, fourth curcuit, Maryland district. April term, 1830. In equity.

The bill and exhibit in this case having been read and considered, and counsel heard thereon, and the prayer of the complainants for the appointment of receivers appearing to be reasonable, it is thereupon, this eleventh day of June, eighteen hundred and thirty, by the circuit court of the United States for the Maryland district, and by authority of the same, ordered, adjudged, and decreed, that Nathaniel Williams and John Glenn be, and they are hereby, appointed receivers, with power and authority to take possession of all the property of the defendants, to dispose of the same, to collect all debts due to them, and to receive from the defendants their books and papers, and to do all such acts, and perform all such duties as fitly appertain to receivers, according to the principles and practice of courts of equity. And it shall be their duty to report to this court their acts and doings herein. But before the said receivers shall proceed to act, they shall file in this court their joint or several bond, with security or securities, to be approved of by this court, or one of the judges thereof, in the penalty of thirty thousand dollars, conditioned for their faithful performance of the duties herein confided to them as receivers, or

which may be imposed upon them by virtue of any future order or decree in the premises: and the said receivers shall receive such commission or allowance for their trouble as shall be allowed to them by this court by some future order in the premises.

G. DUVALL, *P. J.*
ELIAS GLENN, *D. J.*

Afterwards, to wit, on the fourteenth day of June, in the year of our Lord one thousand eight hundred and thirty, the said Nathaniel Williams and John Glenn, in pursuance of the aforegoing interlocutory decree, filed in the circuit court here the following bond, to wit:

Receivers' bond.

Know all men by these presents, that we, Nathaniel Williams, John Glenn, George Williams, and H. McEldery, all of the city of Baltimore, in the State of Maryland, are held and firmly bound unto the United States of America, in the full and just sum of thirty thousand dollars, to be paid to the said United States or its certain attorney, to which payment, well and truly to be made and done, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fourteenth day of June, eighteen hundred and thirty.

Whereas, by a decree passed by the circuit court of the United States for the fourth circuit, sitting for the district of Maryland, the aforesaid Nathaniel Williams and John Glenn were appointed receivers in the case of the United States of America against the president and directors of the Elkton Bank of Maryland, on the 11th day of June, 1830. Now, the condition of the aforegoing obligation is such, that, if the above bound Nathaniel Williams and John Glenn do and shall well and faithfully perform the duties required of them in the premises, and shall obey all and any orders and decrees which may be made or passed by the said court, then the above obligation to be void and of non effect; otherwise to be and remain in full force and virtue in law.

NATH'L WILLIAMS, [SEAL.]
JOHN GLENN, [SEAL.]
GEO. WILLIAMS, [SEAL.]
HUGH McELDERY. [SEAL.]

Signed, sealed, and delivered in presence of

Bond approved. ELIAS GLENN.

Afterwards, to wit, on the fourth day of October, in the year of our Lord one thousand eight hundred and thirty, the said Nathaniel Williams and John Glenn filed in the circuit court here the following petition, to wit:

Petition.

To the honorable the judges of the circuit court of the United States for the fourth circuit and district of Maryland.

The representation of Nathaniel Williams and John Glenn respectfully sheweth, that they were appointed by your honours, receivers

in the case of the United States of America against the president and directors of the Elkton Bank of Maryland, with authority to demand and have the books and papers of the defendants, which books and papers are represented and believed to be in the possession of a certain William Wingate of the district of Maryland. These petitioners further represent that frequent applications have been made to the said Wingate for the said books and papers, but he has neglected and refused to deliver up the same, or any of them, to these petitioners. Wherefore, these petitioners pray the interposition of this honorable court; and that an attachment for contempt may issue out, directed to the said William Wingate, and requiring him to be and appear before your honours, or one of you, to be dealt with according to the usages of law in such cases. And as in duty bound, &c.

NATH'L WILLIAMS.

BALTIMORE CITY, *ss.*

On this 30th day of September, 1830, personally appeared Nathaniel Williams before the subscriber, a justice of the peace for the said city, and made oath on the Holy Evangely of Almighty God, that he has applied, and caused *and* application to be made to William Wingate for the books and papers of the president and directors of the Elkton Bank of Maryland, in whose possession he is creditably informed the same are. And the said Wingate has constantly and hitherto declined, and he believes wholly refused to deliver up the said books and papers, or any of them, to the receivers appointed to take possession of the same.

Sworn to before

JOHN MITCHELL.

Order of Court.

Whereupon, the court passed the following order, to wit:

MR. MOON: Issue the attachment against William Wingate as prayed, and make it returnable on the first day of November, 1830.

[illegible]IAS GLENN,

Associate Judge of the Circuit Court.

October 4th, 1830.

Whereupon, attachment issued in form following, to wit:

Attachment.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To the marshal for Maryland district, greeting:

[SEAL.] We command you, that you attach the body of William Wingate, and him have before the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, at the

Masonic Hall, in the city of Baltimore, on the first day of November next, to answer unto the United States of America for his contempt by him committed, in refusing to deliver up to Nathaniel Williams and John Glenn the books and papers of the Elkton Bank of Maryland, pursuant to an order of the said circuit court for that purpose, passed on the eleventh day of June, eighteen hundred and thirty, in a cause wherein the United States of America are plaintiffs, and the president and directors of the Elkton Bank of Maryland are defendants, on the equity side of the said circuit court. Hereof you are not to fail at your peril, and have you then and there this writ. Witness the honorable John Marshall, chief justice of our Supreme Court, the second day of August, in the year of our Lord one thousand eight hundred and thirty.

[SEAL.] PHILIP MOORE,
Cl'k Circ't C't.

Issued 4th October, 1830.

(Returned,) "Attached." THO. FINLEY,
Marshal.

Afterwards, to wit, on the fourth day of December, in the year of our Lord one thousand eight hundred and thirty-two, the said Nathaniel Williams and John Glenn, receivers as aforesaid, filed in the circuit court here the following report, exhibits, and order of court thereon, to wit:

Receivers' report.

To the honorable the judges of the circuit court of the United States for the fourth circuit and district of Maryland.

The report of Nathaniel Williams and John Glenn respectfully represents that, as receivers in the matter of the president and directors of the Elkton Bank of Maryland, they have collected and received, as proceeds of mortgaged and other property, the sum of ten thousand one hundred and ninety-five dollars, and sixty-nine cents, ($10,195 69,) which sum, after deducting such reasonable commission as your honours shall allow in the premises, is applicable to be paid into the treasury of the United States, and to be credited to the judgment obtained by them against the said Elkton Bank: wherefore, these receivers pray your honours to ascertain and fix their commissions, and to pass an order for the payment of the balance into the treasury of the United States, and to be credited on the judgment rendered in this court, in their favour, against the aforesaid institution; and as in duty, &c.

NATH'L WILLIAMS, }
JOHN GLENN, } *Receivers.*

IN THE CIRCUIT COURT OF THE UNITED STATES, *Fourth Circuit, District of Maryland, November Term*, 1832.

Personally appeared in open court, Nathaniel Williams and John Glenn, receivers as aforesaid, and made oath on the Holy Evangely

of Almighty God, that the foregoing report is true, as therein stated.
Sworn to in open court, 4th December, 1832.

PHILIP MOORE,
Cl'k Circ't C't.

The United States of America
vs.
The President and directors of the Elkton Bank of Maryland.
} Circuit court U. S., district of Maryland, November term, 1832.

Order of Court.

The foregoing report having been read and considered, it is ordered by this court, this fourth day of December, 1832, that there be allowed to Nathaniel Williams and John Glenn, receivers as aforesaid, eight per centum commission upon $10,195 69, and the balance, that is to say, $9,350, be paid into the Treasury of the United States, and be credited on the judgment obtained in this court in favor of the United States against the president and directors of the Elkton Bank of Maryland, after deducting the clerk's commission of one-half of one per cent., $50 97; balance $9,329 06.

G. DUVALL,
ELIAS GLENN, *D. J.*

Clerk's receipt for commissions.

BALTIMORE, *5th December*, 1832.

Received from Nathaniel Williams, esq., district attorney of the United States, for Maryland district, and John Glenn, esq., fifty dollars and ninety-seven cents, clerk's commissions, on the within amount of money brought into court by them, as receivers.

For P. MOORE, *C'lk*,
THO. SPICER.

Receipt for deposite on account of the Treas'r.

OFFICE BANK UNITED STATES,
Baltimore, 6th December, 1832.

$9,329 06

Received of Nathaniel Williams and John Glenn, receivers, nine thousand three hundred and twenty-nine dollars and six cents, on account of the president and directors of the Elkton Bank of Maryland, for the use of the Treasurer of the United States; for which I have given four receipts.

T. B. BUTLER, *Teller.*

Afterwards, to wit, on the thirteenth day of December, in the year of our Lord one thousand eight hundred and thirty-two, a certain James Sewall, of the said district, filed in the circuit court here the following petition, order of court thereon, and receipt, to wit:

PETITION OF JAMES SEWALL.

To the honorable the judges of the circuit court of the United States for the district of Maryland.

The petition of the undersigned respectfully sheweth, that some years ago, the undersigned endorsed a note for a certain John Frey, for $880, which was discounted at the Elkton Bank of Maryland. A suit sometime afterwards was instituted on the said note, and judgment was obtained against the said John Frey; that he became wholly unable to pay, and took the benefit of the insolvent laws of Maryland. That your petitioner, as endorser, paid to the Elkton Bank of Maryland, the amount of principal, interest and costs of said judgment, and took an assignment of the same for his sole benefit. The amount of the judgment, principal, interest, and costs, in the year 1826, when settled by your petitioner, was $1,412 24, from which was deducted, the sum of $649 89, the amount credited to this judgment, arising from the sale of some of the real estate of the said John Frey, leaving the sum of $761 35 due to your petitioner, and which has been paid to the said bank. That the receivers of the United States, appointed by your honorable court, lately made sale of the balance of the real estate of the said John Frey, under a fieri facias, issuing out of the said circuit court at suit of the United States, and the sale amounted to $2,000. That this same property has been offered to the president and directors of the said bank for sale, at the sum of $1,200, and could not obtain it. That your petitioner, as he conceives, by his management, procured a purchaser to the amount of $2,000. That your petitioner believes he is not only equitably entitled to the balance due him, and paid for John Frey, but legally so; he, therefore, prays your honours to pass an order, directing the receivers to pay the amount due him on the judgment assigned by the Elkton Bank against John Frey, when they shall receive the amount for which the land sold; and he, as in duty bound, &c.

JAMES SEWALL.

May 31*st*, 1832.

Amount due James Sewall, $761 35, with interest from 1st Nov. 1827.

Sworn to in open court, this 15th day of December, 1832.

PHILIP MOORE,
Cl'k Circ't Ct.

Order of Court.

The United States vs. *The Elkton Bank of Maryland.* { Circuit court of the United States, 4th circuit, Maryland district.—November term, 1832.

The foregoing petition having been read and considered, and notice thereof acknowledged by the receivers, it is adjudged and ordered by the court, that the said receivers pay over to the said James Sewall

the sum of nine hundred and eighty-nine dollars and seventy-five cents, being the amount, with interest, as set forth in the foresaid petition, ($989 75.)

So ordered this 13th day of December 1832.

G. DUVALL.
E. GLENN.

Receipt.

Received this 15th day of December 1832, from Nathaniel Williams, and John Glenn, receivers &c., the sum of nine hundred and eighty-nine dollars and 75 cents, pursuant to the above order.

$989 75. JAMES SEWALL.

In testimony that the aforegoing is a true copy, taken from the records and proceedings of the said circuit court in the cause aforesaid, and that the said cause is still pending in the said court, I hereunto Seal's place of the circuit court. subscribe my name, and affix the seal of the said circuit court, this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and thirty-three.

PHILIP MOORE.
Cl'k Circ't Ct.

It is agreed that the foregoing record shall be used in the trial or argument of the case of the Farmers Bank of Delaware, against George Beaston, garnishee of the Elkton Bank of Maryland, in the same manner, and to have the same effect as if the same had been regularly certified according to the act of Congress in such case made and provided.

J. C. GROOME, *Att'y for pltff.*
E. F. CHAMBERS, *For defdt.*

24th October, 1833.

THE UNITED STATES OF AMERICA, *District of Maryland to wit:*

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the *on the* eighth day of April, in the year of our Lord one thousand eight hundred and thirty-two: Present, the honorable Gabriel Duvall, one of the associate justices of the Supreme Court of the United States; Elias Glenn, judge of the Maryland district; Nathaniel Williams, esquire, attorney; Thomas Finley, esquire, marshal; Philip Moore, clerk.

Among others were the following proceedings, to wit:

The United States vs. *George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland.*

Be it remembered that heretofore, to wit, on the second day of July, in the year of our Lord one thousand eight hundred and thirty-one, the said United States of America, by Nathaniel Williams, their attorney, prosecuted and sued forth out of the circuit court here the

writ of the United States of America of attachment, directed to the marshal of the Maryland district, in the words and of the tenor following, to wit:

Attachment.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit*:

To the marshal of the Maryland district, greeting.

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at [SEAL.] the city of Baltimore, on the eight day of December, in the year of our Lord one thousand eight hundred and twenty-nine, the United States of America, by the judgment of the same court, recovered against the president and directors of the Elkton Bank of Maryland, as well the sum of fifty thousand dollars, current money, for their damages which they had sustained by reason of the non-performance of certain promises and assumptions by the said president and directors of the Elkton Bank of Maryland to the said United States of America before that time made, as the sum of one hundred and seventy-eight dollars and forty-one cents, for their costs and charges by them about their suit in that behalf laid out and expended, whereof the said president and directors of the Elkton Bank of Maryland are convict, as of record is manifest.

Therefore, you are hereby commanded to attach any of the lands, tenements, goods, chattles, and credits, of the said president and directors of the Elkton Bank of Maryland, if they shall be found in your district, to the value of the damages, costs, and charges aforesaid; and when you have the same so attached, or any part thereof, the same in your custody keep, so that you have the same before the said circuit court, to be held at the city of Baltimore, on the first day of November next, then and there to be condemed, according to the act of Assembly in such case made and provided, to and for the use of the said United States of America, unless the said president and directors of the Elkton Bank of Maryland shall come then and there by themselves, or lawful attorney, and show sufficient cause to the contrary. And you are likewise commanded, by good and lawful men of your district, to make known to such person or persons, in whose hands or possession the said goods, chattles, and credits of the said president and directors of the Elkton Bank of Maryland, shall be attached, so that he, she, or they be and appear at the said court, at the day and place aforesaid, to show cause (if he, she, or they have any,) why the said goods, chattles, and credits so as aforesaid in his, her, or their hands attached, should not be condemned, and execution thereof had and made, as in other cases of recoveries and judgments given in courts of record, according to the directions of the act of Assembly aforesaid, if to him, her or them it shall seem meet; and how you shall execute this writ, you make known unto the said court, on the day and at the place aforesaid, and have you then and there this writ. Witness the honorable John Marshall, chief justice of our Supreme

Court, the eighteenth day of March, in the year of our Lord one thousand eight hundred and thirty-one.

PHILIP MOORE,
Cl'k Circ't Ct.

N. W. Issued 2d July, 1831.

At which said first day of November, in the year of our Lord one thousand eight hundred and thirty-one, being the day of the return of the said aforegoing writ, comes into the circuit court here the said United States of America, by their attorney aforesaid; and the marshal of the Maryland district aforesaid, to wit, Thomas Finley, gentleman, to whom the said writ was in form aforesaid directed, makes return thereof to the court here, thereon endorsed to wit:

Return.

October 19th, 1831.

"Laid in the hand of George Beaston, in presence of George Groome and Joseph Moore."

THOMAS FINLEY, *Marshal.*

And the said president and directors of the Elkton Bank of Maryland, although solemnly called, come not; and the said George Beaston, garnishee of the said president and directors of the Elkton Bank of Maryland, being called, comes into the circuit court here, by Samuel J. Donaldson, his attorney. And the said United States of America, by their attorney aforesaid, exhibit in the circuit court here interrogatories in writing to the said George Beaston, garnishee, as aforesaid, and which are as follows, to wit:

United States of America vs. *the president and directors of the Elkton Bank of Maryland.*

In the circuit court of the United States for the fourth circuit in and for the district of Maryland, November term, 1831. Interrogatories to be answered by the several and respective persons summoned as garnishees in this case.

Interrogatories.

First. At the time the summons was served upon you, as garnishee of the president and directors of the Elkton Bank of Maryland, at the suit of the United States of America, were you in any manner indebted to the said corporation, or have you at any time since been, or are you now, at the time of answering these interrogatories, indebted to the said corporation, or to any other person, for the use or benefit of said corporation? If yea, state particularly the amount of such debt, the consideration on which it was or is founded, the time when it was contracted, and when it was or will be due or payable; and if payable to any other person, for the use of the said corporation, to whom is it so payable?

Second. Have you at any time, since the service of the said summons, paid any sum of money to the said corporation, or to any other person, for the use or benefit of said corporation, or have you

delivered to said corporation any goods property or effects, to secure the payment of any debt which you owed to said corporation at the time of the service of said summons? If you have, state the amount of money so paid, and describe the kind, quantity, and value of the goods so delivered.

NATH. WILLIAMS,
Att'y of the U. S. for the Dist. of Md.

Rule answer.

Thereupon, on motion of the said United States of America, by their attorney aforesaid, it is ruled by the court here that the said George Beaston, garnishee as aforesaid, answer each and every of the interrogatories aforesaid, on or before the second day of the next court; and it is further ruled by the court here that a copy of the said interrogatories and rule be served on the said George Beaston, garnishee as aforesaid, by the said United States of America or their attorney, at least ten days before the said second day of the next court.

Rule plea.

And thereupon, the said United States of America, by their attorney aforesaid, pray that the said George Beaston, garnishee as aforesaid, may also answer to the writ of attachment aforesaid, in the plea aforesaid; whereupon, it is ruled by the court here that the said George Beaston, garnishee as aforesaid, answer to the writ of attachment aforesaid, or judgment will be rendered against him, in default thereof. And the said George Beaston, garnishee as aforesaid, by his attorney aforesaid, defends the force and when, &c., and prays leave of the court here to imparle until the eighth day of April next, to answer to the writ of attachment aforesaid, in the plea aforesaid; and he hath it. The same day is given to the said United States of America also. At which said eighth day of April, in the year of our Lord one thousand eight hundred and thirty-two, to which said day the said George Beaston, garnishee as aforesaid, had leave to imparle, and then to answer to the writ of attachment aforesaid, in the plea aforesaid, come again into the circuit court here, as well the said United States of America, by their attorney aforesaid, as the said George Beaston, garnishee as aforesaid, by his attorney aforesaid. And now here on this day to wit, the twenty-third day of April, in the year of our Lord one thousand eight hundred and thirty-one, the said George Beaston, garnishee as aforesaid, by his attorney as aforesaid, files in the circuit court here his answers to each and every of the interrogatories aforesaid, in form following, to wit:

Answers to the interrogatories.

The United States vs. *George Beaston, garnishee of the Elkton Bank of Maryland.*	In the circuit of the United States for the fourth circuit, Maryland district.

The answers of George Beaston to the interrogatories filed in the above mentioned cause on behalf of the plaintiffs.

In answer to the first interrogatory, deponent saith that, prior to the time of laying the attachment in this cause, he was indebted to the Elkton Bank of Maryland in the sum of five hundred dollars, or thereabout, with interest from some time in 1828, (the period not now exactly recollected;) that in October, in the year 1830, an attachment at the suit of the Farmers Bank of Delaware against this deponent, as garnishee of the Elkton Bank of Maryland aforesaid, was served on him, returnable to Cecil county court, where the said attachment, last mentioned, is still depending; that, at the time of the service of the attachment in this cause at the suit of the United States, the said sum of five hundred dollars, and interest, was in the hands of deponent, and still remain so, who claims to retain the same, as he is held liable to the payment of the attachment first served on him at the suit of the Farmers Bank of Delaware aforesaid, and as he considers himself entitled to a set-off, as is hereinafter stated. Deponent further says that he does not exactly recollect the time when said debt was contracted, as he has had various negotiations with said bank; but that, at thetime he received money from said bank as a consideration for his debt, it was received in the notes of the said Elkton Bank, which were then, as he believes, in a state of depreciation of from ten to twenty per cent. on their nominal value.

To the second interrogatory, he answering, saith that, since the service of the summons in this cause, he has not paid to the Elkton Bank aforesaid, or to any other person for the use of said corporation, any part of the money aforesaid, nor has he made any transfer of goods, property, or effects, to secure the payment thereof, or any part thereof; that he is the bona fide holder and owner of notes of the Elkton Bank aforesaid, of the value nominally of eight hundred and forty-two dollars and thirty-one cents; and he claims to set-off against any demand made in this or any other proceeding against him for the debt aforesaid so many of the said notes at their nominal value as may be equal to the sum claimed from him in this attachment, as garnishee of said bank.

Sworn to in open court this 23d April, 1832.

PHILIP MOORE, *Clk.*

Plea nulla bona.

And the said George Beaston, garnishee, as aforesaid, by his attorney as aforesaid, as before, defends the force and injury, when, &c., and saith that the said United States of America, condemnation of the said sum of money in the attachment aforesaid, and return thereof specified in the hands of him the said George Beaston, as of the goods, chattles, and credits of the said president and directors of the Elkton Bank of Maryland, ought not to have, because he saith that the said George Beaston, at the time of laying the said attachment in the hands of him, the said George Beaston, he had not, nor at any time since hath had, nor now hath, any of the goods, chattles, or credits of them, the said president and directors of the Elkton Bank of Maryland, in his hands; and this he is ready to verify. Wherefore,

he prays judgment whether the said United States of America, condemnation of the said money in the attachment aforesaid and return thereof specified, as of the goods, chattles, and credits of the said president and directors of the Elkton Bank of Maryland, in the hands of him, the said George Beaston, to have, ought, and so forth.

Replication and issue.

And the said United States of America, by their attorney, say that they, by any thing alleged, from having condemnation of the said money in the attachment aforesaid and return thereof specified, as of the goods, chattles, and credits of the said president and directors of the Elkton Bank of Maryland, in the hands of the said George Beaston, they ought not to be precluded, because they say that the said George Beaston, on the day of laying the said attachment in his hands, had to the value of the sum of fifty thousand dollars, in the writ of attachment aforesaid specified, of the goods, chattles, and credits of the said president and directors of the Elkton Bank of Maryland, in his hands, to wit, at the district aforesaid; and this they pray may be inquired of by the country; and the said George Beaston, in like manner, and so forth.

Jury.—Verdict.

Therefore, let a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons, from the pannel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot; and thereupon the twenty persons, being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists; thereupon, the remaining twelve persons being called, come, to wit, Joseph Wilkins, John Smith Hollins, Joseph W. Patterson, David Clendennin, John Berry, William Murdoch, William B. Jackson, John Bradford, Joseph Robinson, Nelson Clark, James Wilson, Samuel Harden, who being empannelled and sworn to say the truth in the premises, upon their oath, do say "that the said George Beaston, at the time of laying the said attachment, had in his hands goods, chattles, and credits of the said president and directors of the Elkton Bank of Maryland, to the value of six hundred and eighty-five dollars and sixty-six cents, current money, in manner and form as the said United States of America above by replying have alleged.

Whereupon, the said United States of America, by their attorney aforesaid, pray that the said sum of six hundred and eighty-five dollars and sixty-six cents, current money, part of the sum so as aforesaid attached, and the sum so as aforesaid found by the jurors aforesaid, in the hands of the said George Beaston, may be condemned in his hands, as of the goods, chattles, and credits of the said president

and directors of the Elkton Bank of Maryland, towards satisfying unto them, the said United States of America, the damages, costs, and charges aforesaid, in the said writ of attachment specified.

Judgment.

Thereupon, it is considered by the court here that the said sum of six hundred and eighty-five dollars and sixty-six cents, current money, so as aforesaid found by the jurors aforesaid, being part of the sum so as aforesaid attached in the hands of the said George Beaston, be condemned in his hands as of the goods, chattles, and credits of the said president and directors of the Elkton Bank of Maryland, towards satisfying unto them, the said United States of America, the damages, costs, and charges aforesaid, in the said writ of attachment specified; and that the said United States of America have thereof their execution, &c.; and the said George Beaston, in mercy, &c.

And now at this day, to wit, the seventh day of May, in the year of our Lord one thousand eight hundred and thirty-two, the parties aforesaid, by their attornies aforesaid, file in the circuit court here the following agreement, to wit:

Agreement.

United States
vs.
Beaston, garnishee of Elkton Bank of Maryland.
} Circuit court, U. S. Maryland district. April Term, 1832.

It is agreed that the judgment to be entered in this case shall be subject to all payments made by the garnishee, and made appear to Gen. James Sewall on or before the first day of August next.

NATH. WILLIAMS, *Dist. Att'y.*
SAM. J. DONALDSON, *Att'y for Garnishee.*

7th May, 1832.

Order to enter the judgment satisfied.

Afterwards, to wit, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-two, the following entry was made on the judgment aforesaid by order of the district attorney.

Entry.

"December 15th, 1832. Satisfied says district attorney."

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid,

Seal's place of the circuit court.
} I hereunto subscribe my name, and affix the seal of the said circuit court, this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and thirty-three.

PHLIP MOORE, *Cl'k Circ't Ct.*

It is agreed that the foregoing record shall be used in the trial or

argument of the case of the Farmers Bank of the State of Delaware against George Beaston, garnishee of the Elkton Bank, in the same manner and to have the same effect as if regularly certified according to the act of Congress in such case made and provided.

J. C. GROOME, *Att'y for Plt'ff.*
E. F. CHAMBERS, *for Def't.*

24th October, 1833.

Whereupon, all and singular the premises being seen, heard, and by the court here fully understood, for that it appears to the court that the said president, directors, and company of the Farmers Bank of the State of Delaware, ought not to recover in the action aforesaid upon the case stated; therefore, it is considered by the court here that the said president, directors, and company of the Farmers Bank of the State of Delaware, take nothing by their said writ, but that they be in mercy for their false clamor, and that the said George Beaston go thereof without day, &c. It is also considered by the court here that the said George Beaston recover against the said president, directors, and company of the Farmers Bank of the State of Delaware, the sum of six dollars thirty-eight cents and one-third of a cent, by the court here unto him the said George Beaston on his assent adjudged for his costs and charges by him about his defence in this behalf laid out and expended, and that he have thereof his execution, &c.

Memorandum.—Judgment for defendant upon case stated was rendered in this cause, on the eleventh day of April, in the year of our Lord one thousand eight hundred and thirty-four.

Test: JAMES SEWALL, *Cl'k.*

And thereupon, the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attornies aforesaid, pray an appeal from the judgment aforesaid so as aforesaid rendered, to the high court of appeals of the State of Maryland, to be held for the eastern shore of the said State; and the same is granted unto them. It is therefore ordered by the court here that the record of proceedings aforesaid, with all things thereunto relating, be transmitted to the said high court of appeals; and the same are transmitted accordingly.

Test: JAMES SEWALL, *Cl'k.*

Plaintiff's costs.		*Defendants' costs.*	
Attorney - - -	$3 33⅓	Attorney - -	$3 33⅓
Clerk - - -	5 20	Clerk - -	3 05
Sheriff - - -	51⅔		
	$9 05		$6 38⅓

STATE OF MARYLAND, *Cecil county, sct.*

I hereby certify that the within and aforegoing is a true copy of the record and proceedings in the action aforesaid.

Seal's place of Cecil county court.

In testimony whereof, I have unto subscribed my name, and affixed the seal of my office, this fourth day of June, anno Domini, 1834.

JAMES SEWALL,
Cl'k Cecil Co'ty Co't.

And now, at this day, comes into the court of appeals here, as well the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, by Ezekiel F. Chambers, esq., his attorney, as the said president, directors, and company of the Farmers Bank of the State of Delaware, by John C. Groome, esq., their attorney; and thereupon, on motion of the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, by his attorney aforesaid, it is ruled by the court here that the said president, directors, and company of the Farmers Bank of the State of Delaware, assign the errors in the record of proceedings of the judgment aforesaid, brought before the court here for correcting the errors supposed to be therein, or judgment by the court here will be entered against him in default thereof. And the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attorney aforesaid, say that, in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error, in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in the plea aforesaid given, was given for the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, against the said president, directors and company of the Farmers Bank of the State of Delaware, when, by the law of the land, that judgment ought to have been given for the said president, directors, and company of the Farmers Bank of the State of Delaware, against the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland; therefore, in that there is manifest error; and they pray that judgment aforesaid for that error, and others being in the record and proceedings aforesaid, may be reversed, annulled, and held entirely as void; and that the said president, directors and company of the Farmers Bank of the State of Delaware, may be restored to all that they have lost by occasion of the said judgment; and that the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, may rejoin to the errors aforesaid: and the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, by his attorney aforesaid, says there is no error in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, and prays likewise that the court here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid by the said president, directors, and company of the Farmers Bank of the State of Delaware, above for errors assigned, and that the said judgment may be in all things affirmed, &c; but, because the court here are not advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the court here, until the third Monday of November next, to hear their judgment of and upon

the premises, because the court now here thereof are not yet advised, &c.

At which said third Monday of November, being the seventeenth day of the same month, in the year of our Lord one thousand eight hundred and thirty-four, comes again into the court of appeals here, as well the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, as the said president, directors, and company of the Farmers Bank of the State of Delaware; and thereupon, further process of and upon the premises aforesaid is, by virtue of an act of Assembly in such case made and provided, continued before the court of appeals here, until the first Monday in June next, the same day is given to the parties aforesaid, to hear the judgment of the court of appeals here of and upon the premises, for that the court now here thereof are not yet advised, and so forth.

At which said first Monday of June, being the first day of the same month, in the year of our Lord one thousand eight hundred and thirty-five, come again into the court of appeals here, as well the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, by his attorney aforesaid, as the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attorney aforesaid; but, because the court here, are not advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the court here, until the third Monday in November next, to hear their judgment of and upon the premises, because the court now here thereof are not yet advised, &c.

At which said third Monday of November, being the sixteenth day of the same month, in the year of our Lord one thousand eight hundred and thirty-five, come again into the court of appeals here as well the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, by his attorney aforesaid, as the said president, directors and company of the Farmers Bank of the State of Delaware, by their attorney aforesaid; and thereupon, further process of and upon the premises aforesaid is, by virtue of an act of Assembly in such case made and provided, continued before the court of appeals here, until the first Monday in June next, the same day is given to the parties aforesaid, to hear the judgment of the court of appeals here of and upon the premises, for that the court now here thereof are not yet advised, and so forth.

At which said first Monday in June, being the sixth day of the said month, in the year of our Lord one thousand eight hundred and thirty-six, come again into the court of appeals here, as well the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, by his attorney aforesaid, as the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attorney aforesaid; but, because the court here are not advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the court here, until the third Monday of November next, to hear their judgment of and

upon the premises, because the court now here thereof are not yet advised, and so forth.

And now here at this day, to wit, the third Monday of November, being the twenty-first day of the said month, in the year of our Lord one thousand eight hundred and thirty-six, come again into the court of appeals here, as well the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, by Reverly Johnson, esq., his attorney, as the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attorney aforesaid; whereupon, as well all and singular the record and process aforesaid, and the judgment thereupon given, as the matters aforesaid by the said president, directors, and company of the Farmers Bank of the State of Delaware, by their attorney aforesaid, above, for error assigned, being seen and by the court here fully understood, and mature deliberation being thereupon had, for that it appears to the court here that, in the record and process aforesaid, and also in the giving of the judgment aforesaid, it is manifestly erred; therefore, it is considered by the court here that the judgment aforesaid, for the error aforesaid and others in the record and process aforesaid, be reversed, annulled, and entirely for nothing esteemed; and that the said sum of money of the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, so as aforesaid attached, be condemned, towards satisfying unto the said president, directors, and company of the Farmers Bank of the State of Delaware, as well the said sum of five hundred dollars, current money, the damages aforesaid in the said writ of attachment specified, as the sum of nine dollars and five cents, for his costs and charges by them laid out and expended in the prosecution of the said writ of attachment, of and upon the premises, and the sum of six dollars and thirty-eight and one-third cents, current money, by the court now here adjudged unto the said president, directors, and company of the Farmers Bank of the State of Delaware, for their damages, which they have sustained by delay of execution, and the sum of seventy-two dollars and sixty-one and one-third cents, for their costs and charges by them sustained by their prosecution of the said writ of the State for the correcting of errors of and upon the premises as aforesaid prosecuted; and that the said president, directors, and company of the Farmers Bank of the State of Delaware have thereof execution, &c.

Memorandum.—Judgment was reversed in this case, and judgment on case stated for appellants, and the court file the following opinion in writing, viz:

Farmers Bank of Delaware vs. *George Beaston, Garnishee of Elkton Bank of Md.*	Attachment. Appeal from Cecil county court, *J. T., 1836.

Exemption is claimed by the defendant from the operation of the attachment in this case.

Having had judgment of condemnation passed against him for the

amount he stood indebted to the Elkton Bank of Maryland, at the suit of the United States, and having paid the money under such judgment, he rests his defence upon an alleged priority given by the acts of Congress to the government, and upon certain proceedings of the government had in the circuit court of the United States for the district of Maryland, for the recovery of his claims against the Elkton Bank of Maryland. The priority of the United States is supposed to be founded on the just construction of the laws of Congress making provision for the collection of her debts. We have been *referred* in the argument to the law of 1789, ch. 5, sec. 21; 1790, ch. 35, sec. 45; 1792, ch. 27, sec. 18; 1797, ch. 74, sec. 5, and the collection law to be found in the 3d vol. of the Laws of the United States, ch. 138, sec. 65. Interpretations of various decisions of the Supreme Court of the United States, and of the circuit courts, have been given to these acts of Congress, which leave no doubt as to their construction. It will be, therefore, only necessary to refer to them. The two first acts above cited had reference to bonds given for duties, and the third act above referred to made provision in relation to the securities in such bonds. These acts gave a preference to the United States in all cases of insolvency, or where any estate in the hands of executors or administrators shall be insufficient to pay all the debts of the deceased; and it was declard that the case of insolvency referred to should be deemed to extend to all cases in which a debtor, not having sufficient property to pay all his debts, should have made a voluntary assignment thereof for the benefit of his creditors, or in which the estate and effects of an absconding, concealed, or absent debtor, shall have been attached by process of law, or to cases in which an act of legal bankruptcy shall have been committed; and by the two subsequent laws, the same provision was made, securing the priority of the United States, and applying them to all other debts due to the United States. In the year 1805, the Supreme Court were first called upon to put a construction upon these laws, and it was adjudged, in 3 Cranch, 73, that the United States would gain no priority in case of a partial bona fide transfer of his property by the debtor, but could only obtain it by such a general divestment of property as would, in fact, be equivalent to insolvency in its technical sense. In 1810, the same court decided that the term "insolvency," as used in the first acts, and "bankruptcy," as used in the latter acts, are synonymous terms. That priority must be conferred to the cases of insolvency specified in the act, and that insolvency must be understood to mean a legal, known insolvency, manifested by some notorious act of the debtor, pursuant to law, not a vague allegation which, in adjusting conflicting claims of the United States, and individuals against debtors, it would be difficult to ascertain. 8 Cranch, 431. The same construction has been maintained in 2 Wheat. 396, and 4 Peters, 386; and in a very recent case Mr. Justice Thompson says the act looks to a legal insolvency, where the property is taken up by the law for distribution among the creditors of the debtor. There is no difficulty in the construction of the statute, until we arrive at the last phrase, "*legal bankruptcy.*"—

What is legal bankruptcy? In 1797, when the act of Congress was passed, the United States had no bankrupt laws. The words in their connexion seem to have reference to the previous cases put in the section, and to point out some legal insolvency or some mode of proceeding, by which the property of the debtor is taken out of his hands to be distributed by others. 1 Paine's C. C. Rep. 629. Such being the construction of the acts of Congress giving the government a preference, we proceed to enquire whether the Elkton Bank was in such a situation as to impart to the United States this preference.

The above decisions demonstrate that the inability of the Elkton Bank to pay her debts, as admitted in the statement, could not per se give to the United States the preference contended for. It must, in the language of the authorities, be a known and legal insolvency; the former of which is not admitted, and the latter could not be predicated of such a condition.

Does the act of 1829, ch. 170, with the proceedings consequent thereon, give rise to the priority contended for? This act provided for the election, *at the next annual* meeting of the stock-holders held in pursuance of their charter, of two trustees, to settle all the outstanding debts and credits of the bank; and further provided that they should be elected in the same manner as the president and directors have been heretofore elected. By refering to the charter of the bank, it will be found that one of its fundamental laws required the president and directors to give one month's notice in the most public places in the county, and in some public print in the city of Baltimore, of the time and place of holding the election of directors annually; and it was furthermore, by a supplement to the said charter, required that the election for directors should take place on the fourth Monday of May. If it were conceded to the Legislature that they possessed power to wind up the concerns of this particular institution by such an act, it must be admitted that the leading provisions of the act, calculated to apprize all interested of the fundamental changes about to be operated in its governments, that they might have an opportunity of protecting their interests by their presence, should have been complied with, in order to give legal efficacy to the acts done under it. So far, however, from this, we are informed by the statements that no notice was given, and that two persons were elected by a majority of the stock-holders, on a different day from the day of the annual election of directors, as the trustees, who never accepted. So that the law was in truth never executed, but the proceedings held under it were undoubtedly inoperative and void, and could therefore not in any manner have operated as a *general divestment of property* within the contemplation of the acts of Congress, as upon this ground to have given the United States a preference; but on the contrary, the charter still thereafter continued to exist, and its affairs were, or ought to have been, rightfully managed and controlled by its then directors, who would continue in office for its government, and the exercise of its corporate functions, until such election should take place; although no priority may exist on the part of the United States, it has

been argued that the appointment of receivers by the circuit court of the United States to take charge of the property and effects of the Elkton Bank of Maryland, placed the debt due from the defendant so under the control of that court as a court of equity, that it could be reached legally by no process of execution or attachment. It is true that money and effects in the hands of the assignee of a bankrupt, or the trustee of an insolvent debtor, cannot be attached, not only because such property stands assigned by operation of law, but because the allowance of such attachments would utterly defeat the whole policy of the bankrupt or insolvent laws, nor can money taken by a sheriff in execution, or money paid into court. Serg. on Attach., 99. But we apprehend that the appointment and bonding of receivers does not work such a disability. The property by the order is not taken under the protection of the court, and, until taken in charge by the receivers, its summary jurisdiction could not be interposed to punish such as might cover it, or portions of it by execution or attachment. The period when it might and ought legally to be considered as under the mantle of legal protection should be the time when a court of chancery would interpose by attachment for disturbing or interfering with the possession of the receiver.

Innocent third persons might be previously affected by extending this doctrine further. It has been argued, and we think with much force, that there is and ought to be an analogy in this respect between the law applicable to receivers and sequestrators; as regards the latter, the court of king's bench have decided that, when a sequestration is awarded to collect money to pay a demand in equity, if it is not executed, that is, if the sequestrators do not take possession, and a judgment creditor takes out execution, notwithstanding the sequestration awarded, there may be a levy under the execution. East. Rep. 9 vol. 335.

So here, the receivers never obtained possession of the credits of the Elkton Bank of Maryland, its books and papers, or its evidences of debt; on the contrary, so far as we are enabled to collect the fact in this respect from the record, they were held adversely; the circuit court of the United States giving their aid and assistance to the receivers to enable them to obtain the possession, with what effect we know not, except that we are left to infer, from the fact of the attachment subsequently issued against the defendant by the United States, that they never did obtain possession. We are not informed by the record that the receivers ever took any steps whatever to assume control over the debt which the defendant owed the Elkton Bank; on the contrary, they take out an attachment in the name of the United States, and serve it on the defendant as garnishee, long after the attachment issued, and served by the plaintiff in this case; and indeed the statement admits that they never attempted to exercise a control over this debt. Lastly, it is urged that the judgment of condemnation obtained against Beaston by the United States should operate as a bar against the recovery by the plaintiff in this case. It is undoubtedly a hardship on the defendant to be compelled twice to pay the same debt, but it must be recollected that the plaintiff had a prior

attachment, which operated as a lien; and it would be a still greater hardship that such plaintiff should lose his lien, thus legally acquired, by the judgment of a court in a cause to which he was no party, and of which we have no evidence that he had in any manner any notice. If the defendant failed to take the proper steps, in the predicament in which he was placed, to defend and protect his interests, it is but fair that he should suffer the consequences. Had notice been given of this attachment by the United States, the plaintiff might have vindicated his rights, and had an opportunity of asserting his anterior lien, and of obtaining the decision of the appellate court, had it become necessary. Nor is it prescribed why it would not have been competent for the defendant, in this conflict of claims against him, to have brought the conflicting parties into chancery, where the rights and priority of each might have been adjudicated without prejudice to him. But last of all, would the defendant be entitled to avail himself of the judgment of the United States recovered against him, since, from the examination of the record of that suit, it appears that his defence was taken solely on the plea of nulla bona, a defence which could certainly have been of no avail, when it appeared, by the answers filed to the interrogatories of the United States, that he was indebted to the Elkton Bank of Maryland; although in the answers he adverts to the attachment issued against him by the Farmers Bank of Delaware, he has not plead such prior attachment as pending against him, whereby he could obtain the opinion of the court in relation to its priority. In every aspect, therefore, in which we can view the decision below, we are brought to the conclusion that it cannot be sustained.

Judgment reversed, and judgment on the case stated for appellant.

Afterwards, that is to say, on the eighth day of May, in the year of our Lord one thousand eight hundred and thirty-seven, the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, by Robert Martin, esquire, his attorney, produced the writ of the United States of America for the correcting of errors of and upon the premises, commanding that the judgment aforesaid so as aforesaid rendered, with all things thereunto relating, be transmitted to the Supreme Court of the United States; the tenor of which said writ is as follows, to wit:

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the court of appeals for the eastern shore of Maryland, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, between the president, directors, and company of the Farmers Bank of Delaware, and George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, a manifest error hath happened to the great damage of the said George Beaston, as by his complaint appears. We being willing that error, if any hath been, should be duly cor-

[SEAL.]

rected, and fully and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done. Witness the honorable Roger B. Taney, chief justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued 5th day of April, 1837.

THO. SPICER,
Cl'k Circ't C't 4th Circ't Md. District.

And on the same day, to wit, the 8th day of May, in the year of our Lord one thousand eight hundred and thirty-seven, were filed by the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, by his attorney aforesaid, the following bond and citation, to wit:

Know all men by these presents, that we, George Beaston, Nathaniel Williams, and John Glenn, of the city of Baltimore, are held and firmly bound unto the president, directors, and company of the Farmers Bank of Delaware, in the just and full sum of one thousand dollars, current money of the United States, to be paid to the said president, directors, and company of the Farmers Bank of Delaware, their certain attorney, successors or assigns, to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, administrators, and *assigns*, jointly and severally, firmly by these presents; sealed with our seals, and dated this fifth day of April, in the year of our Lord one thousand eight hundred and thirty-seven.

Whereas lately, at a court of appeals for the eastern shore of Maryland, the said president, directors, and company of the Farmers Bank of Delaware by the judgment of the same court, recovered against the said George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, the sum of five hundred dollars damages and costs of suit in that behalf laid out and expended: and whereas the said George Beaston hath sued out the writ of the United States for the correcting of errors, and a citation directed to the said president, directors, and company of the Farmers Bank of Delaware, citing and admonishing them to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in August next:

Now, the condition of the above obligation is such that, if the said George Beaston shall well and truly prosecute, with effect, his said writ of error, and pay to the said president, directors, and company of the Farmers Bank of Delaware, the said sum of five hundred dol-

lars, together with all interest, costs, and damages, which may be awarded by the said Supreme Court, in case he shall fail to make his plea good, then the above obligation to be void, otherwise to be and remain in full force and virtue.

GEORGE BEASTON, [SEAL.]
NATH'L WILLIAMS, [SEAL.]
J. GLENN. [SEAL.]

Signed, sealed, and delivered in presence of
THO. SPICER.

Approved, April 10th, 1837.

R. B. TANEY.

The United States of America, to the President, Directors, and Company of the Farmers Bank of Delaware, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in August next, pursuant to a writ of error filed in the clerk's office of the court of appeals for the eastern shore of Maryland, wherein the president, directors, and company of the Farmers Bank of Delaware are plaintiffs, and George Beaston, garnishee of the president and directors of the Elkton Bank of Maryland, is defendant, to show cause, if any there be, why the judgment rendered against the said George Beaston, garnishee as aforesaid, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf. Witness my hand and seal, this tenth day of April, 1837.

R. B. TANEY. [SEAL.]

Notice of the above citation admitted this 20th day of April, 1837.

JOHN C. GROOME, *for*
The P. D. & Co. of the Farmers Bank of Del.

I hereby certify that the aforegoing record and proceedings is truly and faithfully taken and made from the docket entries, minutes, and proceedings, and papers, filed in the cause and now remaining in the office of the court of appeals for the eastern shore of Maryland.

In testimony whereof, I hereunto subscribe my name and affix the [SEAL.] seal of the court of appeals for the eastern shore of the State of Maryland, this first day of July, anno Domini one thousand eight hundred and thirty-seven.

THS. C. NECOLS,
Cl'k Co't App'l for E. S. of Maryland.

Cost of record, $33 50